115

(1)



No. 08 -

IN THE

# Supreme Court of the United States

MARIA D. GARCIA, *ET AL.*,

*Petitioners,*

v.

VANGUARD CAR RENTAL USA, INC., *ET AL.*,

*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit**

## PETITION FOR A WRIT OF CERTIORARI

JOHN VAIL*
ANDRE M. MURA
CENTER FOR
CONSTITUTIONAL
LITIGATION, P.C.
777 Sixth Street, N.W.
Suite 520
Washington, DC 20001
(202) 944-2887
john.vail@cclfirm.com

*Counsel of Record
Counsel for Petitioners

## QUESTIONS PRESENTED

1. Whether 49 U.S.C. § 30106 preempts Fla. Stat. § 324.021(9)(b)(2).

2. Whether the Commerce Clause and Necessary and Proper Clause confer on Congress the power, through 49 U.S.C. § 30106—which lacks express findings or jurisdictionally limiting language—to eliminate certain state-law tort suits against motor vehicle lessors, not as an incident to federal regulation, but on the unsupported (and unsupportable) belief that a suit for damages arising out of a local car accident substantially affects interstate commerce.

3. Whether the court of appeals erred in concluding that Santos Ruiz did not appeal the district court's order granting summary judgment against him.

## PARTIES TO THE PROCEEDINGS

In addition to the parties listed in the caption, Santos Ruiz, Administrator and Personal Representative of the Estate of Nelson Agustin Ruiz, and legal guardian of the minor Nelson Xavier Ruiz, is, in petitioners' view, a party to this proceeding, but his status as an appellant in the Court of Appeals is a question presented to this Court for its review.

Also, Respondents include National Rental (US), Inc., a Delaware corporation, f.k.a. National Car Rental; Alamo Financing, L.P., a foreign limited partnership; Alamo Rent-A-Car (Canada) Inc., a Florida corporation, et al.; and Vanguard Rental (Belgium), Inc., a Florida corporation, et al. These Respondents referred to as Vanguard hereafter, own interests in the rental car at issue.

The United States of America is also a party to this proceedings; it intervened in the court of appeals pursuant to 28 U.S.C. § 2403 to defend the constitutionality of 49 U.S.C. § 30106.

## TABLE OF CONTENTS

**APPENDIX**

## TABLE OF AUTHORITIES

**Cases**

**Constitutional Provisions**



**Statutes**



**Rules**

**Other Authorities**

## PETITION FOR A WRIT OF CERTIORARI

Petitioners Maria D. Garcia, as surviving Spouse, as Administrator and Personal Representative of the Estate of Jose Garcia, and on behalf of her Minor Children, and Santos Ruiz, as Administrator and Personal Representative of the Estate of Nelson Agustin Ruiz, and on behalf of and as legal guardian of the minor Nelson Xavier Ruiz, respectfully petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Eleventh Circuit in this case.

## OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Eleventh Circuit is published at 540 F.3d 1242 (11th Cir. 2008), and is reproduced in the Appendix to this Petition ("App.") at 1a-20a. The order of a single judge of the court of appeals denying petitioners' motion to recall the mandate and correct the court's judgment and decision (App. 21a) is unreported. The order of the United States District Court for the Middle District of Florida, in which it granted summary judgment against Petitioners (App. 22a-53a), is published at 510 F. Supp. 2d 821 (M.D. Fla. 2007).

## JURISDICTION

The court of appeals entered judgment on August 19, 2008, App. 1a. On October 22, 2008, Justice Thomas extended the time within which to file a petition for a writ of certiorari to December 17, 2008. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, § 8 of the United States Constitution is reproduced at App. 58a-60a.

49 U.S.C. § 30106 (2006) ("Amendment") is reproduced in full at App. 61-63a. Fla. Stat. § 324.021 (2007) is reproduced in full at App. 64a-70a.

## INTRODUCTION

In 2005, Congress enacted two statutes that the decision below correctly characterized as resting on a "novel" theory of Congressional commerce power: 49 U.S.C. § 30106 (2006), the Graves Amendment, which is at issue in this case, and the Protection of Lawful Commerce in Arms Act, Pub. L. No. 109-92, 119 Stat. 2095 (codified at 15 U.S.C. §§ 7901-03) ("PLCAA"). Both statutes have "the sole effect and purpose of preempting state-law claims because Congress believed them to be a burden on an interstate market." App. 18a; *see* 49 U.S.C. § 30106 (preempting certain tort claims against motor vehicle lessors); 15 U.S.C. §§ 7901-03 (preempting certain tort claims against gun manufacturers). These statutes are "novel," the court explained, because historically Congress has "expressly or impliedly preempt[ed] state tort law as an incident to federal regulation." App. 18a. Contrasting treatment, by two courts of appeals, of the important federal question presented by these statutes, warrants review by this Court.

In enacting these statutes, Congress did not show traditional sensitivity to the complementary role that state tort law plays in our civil justice system and

the unique and primary role of States as separate sovereigns in our federal system to provide tort remedies to compensate for injuries. *See Mo. Pac. Ry. Co. v. Humes*, 115 U.S. 512, 521 (1885) ("It is the duty of every State to provide, in the administration of justice, for the redress of private wrongs."); *Marbury v. Madison*, 5 U.S. 137, 163 (1803). In those rare instances where Congress has expressly preempted tort law, it has either substituted a federal remedy in place of the displaced state remedy,[1] or it has preempted state tort law in order to harmonize federal and state regulatory schemes. But Congress has never, before 2005, sought to blot out state tort law, not as an incident to federal regulation, but solely on the belief that a suit for damages substantially affects interstate commerce.

The Second Circuit Court of Appeals recently considered whether Congress exceeded its Commerce Clause authority in enacting the PLCAA. *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 393-95 (2d Cir. 2008), cert. petition filed, No. 08-230 (Oct. 20, 2008). It did so based on the four considerations set forth in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549

---

[1] *See, e.g.*, Air Transportation Safety and System Stabilization Act of 2001, Pub. L. No. 107-42, 115 Stat. 230 (2001) (substituting a federal remedy for tort claims that 9/11 victims and their families could have asserted against the airlines whose planes were hijacked); 42 U.S.C. §§ 300aa-1 *et seq.* (federalizing all claims arising from personal injuries relating to the administration of vaccines); 42 U.S.C. §§ 2210 *et seq.* (federalizing all claims for personal and property damage arising from significant accidents at nuclear power plants).

(1995), finding it to be constitutional.[2] 524 F.3d at 395. It did not, however, apply the significantly more deferential rational-basis review outlined in *Gonzalez v. Raich*, 545 U.S. 1 (2005), in considering whether these tort suits substantially affect the national gun industry or the economy writ large. *See* 524 F.3d at 393-95. In fact, the Second Circuit in *Beretta* did not even cite to *Raich*, thus indicating that the court believed the *Raich* "substantial effects" analysis to be inapplicable where, as here, Congress seeks to regulate intrastate activity but does not do so incident to a federal scheme. *See id.*

The Eleventh Circuit, however, in its decision below, refused to assess § 30106's constitutionality based on the *Morrison/Lopez* factors, App. 17a, which are directly applicable here. Instead, it applied the inapposite test elaborated in *Raich*, even as it acknowledged that § 30106 does not preempt tort law incident to a federal scheme. And it did so without considering whether preempting state tort suits that arise out of local accidents and involve a leased vehicle that is not used for interstate transport was "essential" to the effectuation of some larger federal regulatory scheme.

More critically, the decision below misidentified the activity being directly regulated by § 30106—tort law—thereby avoiding the question whether seeking compensatory damages under state law is itself commerce or any sort of economic enterprise. Instead, the court asked whether the regulation itself, rather than the activity being regulated,

---

[2] Petitioners express no view regarding whether the PLCAA is constitutional or whether the *Beretta* court correctly decided the Commerce Clause question before it.

substantially affects interstate commerce. That analysis is wholly inconsistent with this Court's Commerce Clause jurisprudence.

Had the court of appeals correctly identified the regulated activity; recognized that it is not commerce or any sort of economic enterprise; and, accordingly, considered whether a single suit for damages against a lessor substantially affects interstate commerce or the motor vehicle leasing industry based on the four considerations set forth in *Morrison* and *Lopez*, it could not have concluded that § 30106 is constitutional. For in "our Nation's history our cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature." *Morrison,* 529 U.S. at 613 (citation omitted). Whether it is within the power of Congress to enact a law to exert control over intrastate activities in *isolation* rather than in *connection* with a more comprehensive scheme of regulation, *see Raich*, 545 U.S. at 39, it is an important federal question that this Court should decide.

This important constitutional question would not have been reached had the court of appeals held that 49 U.S.C. § 30106 does not preempt Fla. Stat. § 324.021(9)(b)(2). Section 30106's savings clause expressly preserves state-law "liability" imposed on lessors failing to meet financial responsibility or insurance requirements, § 30106(b)(2); and Fla. Stat. § 324.021(9)(b)(2), which imposes a duty on lessors to secure minimum insurance in specific amounts, is a qualifying financial responsibility law. If Vanguard had complied with this provision of Florida's motor vehicle insurance laws, then payment for damages in this case would have come from the lessor's

insurance. But because Vanguard failed to comply with this Florida law, it remains liable for damages up the amounts specified therein—liability that § 30106(b)(2) expressly preserves.

## STATEMENT

### A. The Federal and State Statutory Schemes

49 U.S.C. § 30106 is the single substantive provision of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, 119 Stat. 1144 (2005)—an appropriations act which provides funds for transportation projects throughout the United States. Representative Sam Graves, after receiving "substantial political contributions from executives of Enterprise Rent-A-Car, Vanguard Car Rental, and other car and truck leasing companies," introduced § 30106 as an amendment to the appropriations bill, on the belief that vicarious liability suits burden the leasing industry. Susan Linde Martin, *Commerce Clause Jurisprudence and the Graves Amendment: Implications for the Vicarious Liability of Car Leasing Companies*, 18 U. Fla. J. Law & Pub. Policy 153, 164 (2007). The Amendment was adopted without the review of any congressional committee, without express findings, without hearings, without any debate in the Senate,[3] and with only a 20-minute debate in the House of Representatives. *Id.*; *see also* 151 Cong. Rec. H1201 (daily ed. Mar. 9, 2005) (statement of Rep. Conyers) ("[T]he issue of

---

[3] During a period of morning business, in which senators were permitted to speak on any topic, 151 Cong. Rec. S5433-01, Senator Santorum did make a statement regarding the version of the Amendment passed by the House. *See* 151 Cong. Rec. S5433-03.

preempting state liability is under the jurisdiction of the Committee on the Judiciary, of which I am the Ranking Member, and no hearings have been held to examine the appropriateness of the language which would be included in the legislation should the amendment pass.")

The Amendment has two operative provisions: a preemption clause, which purports to shield motor vehicle lessors from certain vicarious liability suits, 49 U.S.C. § 30106(a), whether or not the vehicle has travelled "in commerce," *see id.*; and a savings clause, which preserves from preemption, *inter alia*, state laws "imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements," *id.* § 30106(b)(2).

In Florida, vicarious liability is a creature of the common law, and is known as the dangerous instrumentality doctrine. The doctrine "is premised upon the theory that the one who originates the danger by entrusting the automobile to another is in the best position to make certain that there will be adequate resources with which to pay the damages caused by its negligent operation." *Kraemer v. Gen. Motors Acceptance Corp.*, 572 So. 2d 1363, 1364 (Fla. 1990) (quoting *S. Cotton Oil Co. v. Anderson*, 86 So. 629, 638 (1920)). It "seeks to provide greater financial responsibility to pay for the carnage on our roads," *id.* at 1365, and thus advances an important state interest that has appreciated with the increase in motor vehicle traffic. *See Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000) ("If Florida's traffic problems were sufficient to prompt its adoption in

1920, there is all the more reason for its application to today's high-speed travel upon crowded highways." (quoting *Kraemer*, 572 So.2d at 1365)); *see also Mackey v. Montrym*, 443 U.S. 1, 17-18 (1979) (recognizing the "compelling interest in highway safety").

Thus, in *Southern Cotton Oil v. Anderson*, the court found Southern Cotton Oil vicariously liable under the dangerous instrumentality doctrine for the negligence of its employee, who, while operating a car owned by Southern Cotton Oil with its express or implied permission, drove the car negligently and caused an accident. 86 So. at 636. Thereafter, the court extended the doctrine to the owner of a vehicle acting as a lessor or bailor for the negligent operation of the vehicle by the lessee or bailee. *Susco Car Rental Sys. v. Leonard*, 112 So. 2d 832, 835-36 (Fla. 1959); *Lynch v. Walker*, 31 So. 2d 268, 271 (1947), *overruled in part on other grounds by Meister v. Fisher*, 462 So. 2d 1071 (Fla. 1984).

In 1986, the Florida Legislature enacted Fla. Stat. § 324.021(9)(b), which "provides a statutory exception from vicarious liability under the dangerous instrumentality doctrine for owners of motor vehicles leased for one year or longer if there is strict compliance with the express provisions of that statute." *Aurbach*, 753 So. 2d at 63 n2; *see* Fla. Stat. § 324.021(9)(b) (1996) ("[L]essor, under an agreement to lease a motor vehicle for 1 year or longer which requires the lessee to obtain insurance acceptable to the lessor which contains limits not less than $100,000/$300,000 bodily injury liability and $50,000 property damage liability . . . shall not be deemed the owner of said motor vehicle for the purpose of determining financial responsibility for the operation

of said motor vehicle or for the acts of the operator in connection therewith."), cited in *Ady v. American Honda Finance Corp.*, 675 So. 2d 577, 580 (Fla. 1996). This portion of Florida's financial responsibility statute, which deems a lessor of an insured vehicle not to be owner, has withstood constitutional scrutiny. *See Abdala v. World Omni Leasing, Inc.*, 583 So. 2d 330 (Fla. 1991) (rejecting state constitutional due process and equal protection challenges).

Subsequently, in 1999, the Florida Legislature provided a similar statutory exception for short-term lessors, i.e., owners of motor vehicles whose vehicles are leased for less than one year, which is codified at Fla. Stat. § 324.021(9)(b)(2) (2007).[4] It provides, in relevant part:

> The lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, shall be deemed the owner of the motor vehicle for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith only up to $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than $500,000 combined property damage and bodily injury liability, the lessor shall be

---

[4] Petitioners here cite the 2007 version of the state statute considered by the court of appeals. Also, the exception for long-term lessors, cited above as Fla. Stat. § 324.021(9)(b), has been recodified at Fla. Stat. § 324.021(9)(b)(1).

> liable for up to an additional $500,000 in economic damages only arising out of the use of the motor vehicle.

*Id.* (App. 67a) And it, too, has withstood constitutional scrutiny. *See, e.g., Sontay v. Avis Rent-A-Car Sys., Inc.*, 872 So. 2d 316 (Fla. Dist. Ct. App. 2004).

### B. The Proceedings Below

Petitioners are the administrators and personal representatives of the Estates of Jose Garcia and Nelson Agustin Ruiz. Mr. Garcia and Mr. Ruiz died in a car accident allegedly caused by Gregory Davis, who, at the time, was driving a car he had leased from Vanguard. The leased car was rented and driven solely in Florida, and the accident—Mr. Davis negligently changed lanes and collided with a car driven by Mr. Garcia and occupied by Mr. Ruiz, forcing their car into a tree—occurred in Florida.

Vanguard, in anticipation of a suit alleging vicarious liability for Mr. Davis's negligence, filed a declaratory judgment action in the district court against the Garcia and Ruiz estates, seeking a declaration that 49 U.S.C. § 30106 preempted any claims against it for wrongful death or bodily injury caused by its lessee. Jurisdiction was based on diversity. Thereafter, the Garcia and Ruiz estates filed separate wrongful death actions in Florida state court against Vanguard, its corporate affiliates, and Mr. Davis. The state court actions were removed and consolidated with the declaratory judgment action, and the district court dismissed several corporate parties it determined were fraudulently joined to defeat diversity jurisdiction.

Vanguard moved for summary judgment, contending that § 30106 preempts any state-law liability it may have had under Florida law for the negligence of their lessee, Mr. Davis. Vanguard also argued that § 30106 is a constitutional exercise of Congress's Commerce Clause authority.

Petitioners, in response, contended that their claims were preserved from preemption by § 30106's savings clause, which preserves from preemption, *inter alia*, state laws "imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements," *id.* § 30106(b)(2). Fla. Stat. § 324.021(9)(b)(2), Petitioners argued, is such a law: it allocates responsibility to the owner (here Vanguard) to secure the requisite insurance specified therein. Had Vanguard complied with § 324.021(9)(b)(2), by fulfilling its duty to secure the placement of the minimum insurance specified therein, payment for damages in this case would have come from insurance. But because Vanguard failed to comply with Fla. Stat. § 324.021(9)(b)(2), or submit evidence of compliance, it remained liable, according to Petitioners, under the dangerous instrumentality doctrine—liability that the federal Amendment expressly preserves when the statutory minimum insurance is not available. *See* 49 U.S.C. § 30106(b)(2). In addition, Petitioners argued that Congress exceeded its Article I authority when it enacted § 30106.

The district court granted Vanguard's motion for summary judgment. It concluded that § 30106 preempts all of Petitioners' tort claims, App. 43a, and is a constitutional exercise of Congress's Article I power, because § 30106 regulates the channels and instrumentalities of interstate commerce, and because it regulates intrastate activity substantially affecting interstate commerce. App. 45a-49a. The clerk then entered a final judgment in the declaratory judgment case and single judgment

applicable to the Garcia removal action and the Ruiz removal action.

Petitioners, who were represented by the same three attorneys in the district court, filed a single notice of appeal in the Garcia removal action, listing the case numbers of all three consolidated cases, and expressing an intention to appeal the identical orders granting summary judgment that had been entered against them. *See* Notice of Appeal, Doc. No. 54, *Garcia, et al. v. Vanguard, et al.*, No. 5:06-cv-220 (M.D. Fla. May 10, 2007) (App. 56a-57a). They did so because: the district court had consolidated Vanguard's declaratory action (in which both the Garcia and Ruiz estates were party-defendants) and the two removal actions (in which the Garcia and Ruiz estates separately filed suit against Vanguard, its affiliates, and Mr. Davis); and the district court had, in its consolidation order, directed the parties to make any filings applicable to the three consolidated cases in the Garcia removal action.

After docketing the appeal, the Eleventh Circuit requested letter briefing on jurisdiction. Counsel for the Garcia and Ruiz estates and Vanguard, in submissions to the court, argued that the court had appellate jurisdiction over all three actions. The court of appeals disagreed, holding that it lacked jurisdiction over the Garcia removal action and the Ruiz removal action because the final judgment entered by the court did not dispose of any remaining claims against Mr. Davis. Order, *Garcia, et al. v. Vanguard, et al.*, No. 07-12235 (11th Cir. July 30, 2007). The court, however, accepted jurisdiction over the judgment entered in the declaratory action, to which Mr. Davis was not a party, because it

conclusively disposed of all claims against all parties. *Id.*

Subsequently, the United States intervened, pursuant to 28 U.S.C. § 2403(a), to defend the constitutionality of § 30106. After briefing and oral argument, the court of appeals affirmed the district court's decision. First, it stated that the Garcia estate, but not the Ruiz estate, had appealed the orders below. App. 3a. Second, it agreed that Petitioners' tort claims are preempted. App. 11a. In reaching that conclusion, it rejected Petitioners' argument that Fla. Stat. § 324.021(9)(b)(2) is a qualifying financial responsibility or insurance law for purposes of the Amendment's savings clause. App. 10a-11a. Lastly, the court of appeals held that § 30106 represents a constitutional exercise of Congress's Article I power. App. 20a.

Petitioners subsequently filed a motion to recall the mandate and amend or correct the decision to reflect that Santos Ruiz was a party to the appeal, but the court, by order of a single judge, denied the motion.

## REASONS FOR GRANTING THE PETITION

The second question presented is a critical one for this Court's Commerce Clause jurisprudence. Because it alone would support this Court's review of all three questions presented (including the preemption question that logically precedes it, the proper resolution of which would permit this court to resolve this case on non-constitutional grounds),

Petitioners begin by discussing the second question presented.[5]

## I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S COMMERCE CLAUSE DECISIONS

1. *Lopez*, *Morrison*, and, indeed, *Raich* squarely hold that, in considering Congress's authority to regulate intrastate activity because it substantially affects interstate commerce, courts must focus on whether the regulated *activity* is commerce, not whether its *effects* are. *See Lopez*, 514 U.S. at 567 (to asking whether the regulated activity, gun possession, was non-economic and not commerce); *Morrison*, 529 U.S. at 610 (asking whether the regulated activity, violence against women, was non-economic and not commerce); *Raich*, 545 U.S. at 26-27 (even accepting that the activity of growing and using marijuana for private consumption related to the treatment of a medical illness, is non-economic, finding that Congress could rationally conclude that its regulation is essential to the effectuation of a comprehensive regulatory scheme that is itself constitutional). For purposes of this constitutional inquiry, it is essential that the focus be on the activity directly regulated, the Court has explained,

---

[5] Question three—whether the court of appeals erred in determining that Santos Ruiz did not appeal the district court's order granting summary judgment against him—is presented in the event that this Court accepts review of the first or second questions presented. But if this Court denies review of questions one and two of this petition, there is no reason to consider separately question three, given that the court of appeals affirmed the decision of the district court.

if the Commerce Clause is to have enforceable limits. *See Morrison*, 529 U.S. at 617.

The court of appeals, however, did not follow that directive. It looked beyond the activity directly regulated by § 30106—state-imposed liability—to the commercial nature of the motor vehicle leasing industry that is ostensibly affected by that activity. In essence, the court of appeals asked whether "the *effect* of the statute . . . deregulat[ing] the rental car market" is commercial. App. 17a (emphasis added); *id.* at 19a ("It is plain that the rental car market has a substantial effect on interstate commerce."). But "ask[ing] whether the challenged *regulation* substantially affects interstate commerce, rather than whether the *activity* being regulated does so," is inconsistent with the analyses of *Morrison* and *Lopez*. *See Rancho Viejo, L.L.C. v. Norton*, 334 F.3d 1158, 1160 (D.C. Cir. 2003) (Roberts, J., dissenting from denial of rehearing en banc). Had the court of appeals correctly isolated the activity directly regulated by § 30106 and asked whether *it* has a substantial effect on the leasing industry or the national economy writ large, it would have had to confront the question whether seeking compensatory damages under state law following a local accident is itself commerce or any sort of economic enterprise.

The answer to that question, in Petitioners' view, must be no. Florida imposes on certain owners, who, like Vanguard, engage in the business of renting or leasing vehicles, limited liability for the negligence of their lessees. *See* Fla. Stat. § 324.021(9)(b)(2). Section 30106 regulates this state-imposed liability, but liability is not "'commerce' or any sort of economic enterprise, however broadly one might

define those terms."[6] *Lopez*, 514 U.S. at 561 (footnote omitted). Liability is not a commodity that can be produced, distributed, or consumed. *See Raich*, 545 U.S. at 25-26 (explaining that commerce is "quintessentially economic" and that "'economics' refers to 'the production, distribution, and consumption of commodities.'" (citing *Webster's Third New International Dictionary* 720 (1966)). Nor is liability a good or service that may be exchanged. *See Black's Law Dictionary* 263 (7th ed. 1999) (defining commerce as "[t]he exchange of goods and services" or "[t]rade and other business activities."). There is no trade or "intercourse" in battery or torts generally. *Compare Morrison*, 529 U.S. at 615 (concluding that gender-motivated violence is not commerce); *see Gibbons v. Ogden*, 22 U.S. 1, 189-90 (1824) (explaining that commerce is traffic, "but it is something more: it is intercourse.").

Here, Mr. Garcia and Mr. Ruiz were not willing participants to the harms visited upon them. The underlying suits (which were removed to federal court) engage the civil justice system for compensation for the injuries caused by this car accident. If Florida awards compensation here, it is not doing so pursuant to or in furtherance of any cognizable "market." This is true even though state-awarded compensation consists of the payment of monetary damages, often through insurance, because the transfer does not create wealth, but rather

---

[6] Section 30106, to be sure, does not regulate who may own or lease a motor vehicle; it does not prescribe any standards that motor vehicles must meet; and it does not compel any conduct on the part of any one who owns, leases, or operates a motor vehicle. *See* 49 U.S.C. § 30106.

provides compensation for what was lost in the accident.

If the regulated activity (state-imposed liability) is indeed not commerce or any sort of economic enterprise, then the court of appeals erred by not examining whether that activity substantially affects the leasing industry through the lens of the four "substantial effects" factors. That error matters because § 30106 would not survive constitutional scrutiny under these factors.

First, § 30106 lacks express findings, which otherwise could have enabled this Court to evaluate the legislative judgment that a substantial effect, though not visible to the naked eye, in fact exists here. *See id.* § 30106; *Lopez*, 514 U.S. at 563. *Compare* PLCAA, 15 U.S.C. § 7901.

Second, § 30106 contains "no express jurisdictional element which might limit its reach to a discrete set of [lawsuits] that additionally have an explicit connection with or effect on interstate commerce," *Lopez*, 514 U.S. at 562, such as lawsuits against lessors whose cars are used in interstate transport. *See* 49 U.S.C. § 30106. *Compare* PLCAA, 15 U.S.C. § 7903(4).

Third, and more critically, the link between vicarious liability and its purported effect on interstate commerce is attenuated at best. Because liability is non-economic, Congress, pursuant to § 30106, can directly regulate an individual instance of liability only if it individually has a substantial effect on interstate commerce. *See Lopez*, 514 U.S. at 565-66. Here, it is beyond reasonable dispute that a single compensatory award will not substantially

affect the national economy or the motor vehicle leasing industry, whose estimated revenue in 2002 was $34.951 billion. U.S. Dep't of Commerce, *Automotive Equipment Rental & Leasing: 2002 Economic Consensus, Real Estate and Rental and Leasing Industry Series*, Table 1 (July 2004), http://www.census.gov/prod/ec02/ec0253i03.pdf. Congress certainly made no express findings to the contrary. The effect of tort liability, in a single case involving a local accident, on interstate commerce is attenuated at best. *Cf. Bates v. Dow Agrosciences L.L.C.*, 544 U.S. 431, 446 (2005) (characterizing the aggregate effect of damages awards in that case as "even more attenuated" than the "indirect" pressures exerted by state-law requirements), and thus § 30106 is facially unconstitutional. *See Vanguard Car Rental USA, Inc. v. Drouin*, 521 F. Supp. 2d 1343, 1351 (S.D. Fla. 2007) (holding § 30106 facially unconstitutional) ("Congress exceeded the authority granted by the Commerce Clause when it enacted 49 U.S.C. § 30106."); *Graham v. Dunkley*, 827 N.Y.S.2d 513, 524-25 (N.Y. Sup. Ct. 2006) (same), *overruled* by *Graham v. Dunkley*, 852 N.Y.S.2d 169 (N.Y. App. Div.) (holding § 30106 constitutional as a regulation of the channels and instrumentalities of interstate commerce, and intrastate activities (motor vehicle leasing) that have a substantial effect on interstate commerce), *appeal dismissed* 889 N.E.2d 484 (N.Y. 2008) (no substantial constitutional question is directly involved).[7]

---

[7] The decision in *Drouin* has not been withdrawn, but Petitioners acknowledge that the decision below is controlling.

2. This Court in *Morrison* ended the portion of its opinion discussing Congress's commerce power with these words:

> The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States. *See, e.g., Cohens v. Virginia*, 6 Wheat. 264, 426, 428, 5 L.Ed. 257 (1821) (Marshall, C.J.) (stating that Congress "has no general right to punish murder committed within any of the States," and that it is "clear . . . that congress cannot punish felonies generally"). Indeed, we can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime *and vindication of its victims*.

529 U.S. at 618 (footnote omitted; emphasis added). That coda applies with equal force to the states' primary and traditional role respecting tort law. *Cf. Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) ("Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts."). States traditionally have occupied the field in the administration of civil justice, whether for the recompense of personal or property injuries. *See The Federalist* No. 17, at 103 (Alexander Hamilton) (Modern Library College ed. 1988) (noting that the "administration of criminal and civil justice" is a province of the States); *cf. Village of Euclid, Ohio v.*

*Ambler Realty Co.*, 272 U.S. 365, 387-88 (1926) (noting that the States have traditionally regulated real property). Indeed, this Court has long recognized that, as a historical matter and as a matter of constitutional design, "[i]t is the duty of every State to provide, in the administration of justice, for the redress of private wrongs." *Mo. Pac. Ry. Co. v. Humes*, 115 U.S. 512, 521 (1885); *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (Holmes, J.) (recognizing that "the very essence of civil liberty . . . consists in the right of every individual to claim the protection of the laws, whenever he receives injury," and "[o]ne of the first duties of government is to afford that protection") (citing William Blackstone, 3 *Commentaries* 23). And it has not understood the Commerce Clause as establishing a national police power through which Congress can "cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the Constitution." *Head v. New Mexico Bd. of Examiners in Optometry*, 374 U.S. 424, 428 (1963) (discussing dormant commerce clause) (quoting *Sherlock v. Alling*, 93 U.S. 99, 103, (1876)) (internal quotation marks omitted).

*Morrison* plainly rejected that unlimited view of Congressional power with this reasoning: "If Congress may regulate gender-motivated violence, it would be able to regulate murder or any other type of violence since gender-motivated violence, as a subset of all violent crime, is certain to have lesser economic impacts than the larger class of which it is a part." *Id.* at 615. That logic is equally applicable here: if

Congress can blot out vicarious liability (through legislation that is not incident to federal regulation), it would be able to blot out any (and all) state tort law of its choosing since vicarious liability, as a subset of all tort liability, is certain to have lesser economic impacts than the larger class of which it is a part. Congress, for instance, based on this limitless view of federal power could blot out all tort law for motor vehicle accidents. The court of appeal's decision may be read to permit Congress to do just that; thus, it is inconsistent with this Court's precedents, and further review by this Court is warranted. *See Lopez*, 514 U.S. at 584 (Thomas, J., concurring) ("[W]e *always* have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power.") (emphasis in original).

## II. THE DECISION BELOW CONFLICTS WITH THE ANALYSIS OF A DECISION OF THE SECOND CIRCUIT COURT OF APPEALS RESPECTING THE CONSTITUTIONALITY OF A SIMILAR FEDERAL ACT

In *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 393-95 (2d Cir. 2008), the court upheld Congress's authority under the Commerce Clause to preempt state tort law substantially affecting the interstate firearms industry. The federal statute at issue there, the Protection of Lawful Commerce in Arms Act, Pub. L. No. 109-92, 119 Stat. 2095 (codified at 15 U.S.C. §§ 7901-03) ("PLCAA"), preempted certain third-party liability claims against the gun industry. In assessing the constitutionality of the PLCAA, the court did not hold that the statute was directly regulating

firearms as a "thing" in interstate commerce, even though the statute contained jurisdictional language "in interstate or foreign commerce" which limited its reach. Rather, it considered whether the PLCAA was constitutional under the *Lopez* "substantial effects" factors. The court's consideration of those factors is an acknowledgment that it considered the activity regulated by the PLCAA to be tort law—not the production of firearms. *See id.*

The *Beretta* court found the PLCAA to be constitutional because Congress: (1) made express findings regarding the threat state-law liability poses to the firearms industry; and (2) ensured that the "PLCAA only reaches suits that 'have an explicit connection with or effect on interstate commerce.'" *Id.* at 394 (quoting *United States v. Lopez*, 514 U.S. at 562).

The court, however, did not, as did the Eleventh Circuit in the decision below, apply the significantly more deferential review of commerce power outlined in *Raich*, in considering whether certain state tort law substantially affects an industry. 524 F.3d at 393-95. In fact, the Second Circuit in *Beretta* did not even cite to *Raich*, thus indicating that the court believed the *Raich* "substantial effects" analysis to be inapplicable where, as here, Congress seeks to regulate intrastate activity but does not do so incident to a federal scheme. *See id.*

The Eleventh Circuit's analysis is inconsistent with Second Circuit's analysis in *Beretta* and, as discussed above, inconsistent with this Court's precedents. That inconsistency, again, matters. This is not a situation where the same outcome obtains

regardless of the analysis employed. *See* supra 17-18.

## III. WITH RESPECT TO PREEMPTION, THE DECISION BELOW IS INCONSISTENT WITH THIS COURT'S PRECEDENTS ON STATUTORY CONSTRUCTION

The court of appeals concluded that Congress intended, through § 30106's savings clause, to preserve minimum insurance requirements applicable as a condition of registration or licensing. It reached that conclusion by reading subsections (b)(1) and (b)(2) of the savings clause together. But the qualification "privilege of registering and operating a motor vehicle," which is present in subsection (b)(1) but not in (b)(2), indicates that Congress did not intend to so qualify the terms financial responsibility or insurance requirement in subsection (b)(2). The court of appeals thus erred in reading the savings clause narrowly to preserve only a subset of minimum insurance laws—those that apply as a condition of registration or licensing.

This Court corrected a similar error of statutory interpretation in *Russello v. United States*, 464 U.S. 16 (1983). There, the Court considered "whether profits and proceeds derived from racketeering constitute an 'interest' within the meaning of [18 U.S.C. § 1963(a)(1)] and are therefore subject to forfeiture." *Id.* at 20. The Court noted that several lower courts had narrowly construed the term "interest" in § 1963(a)(1) because Congress had qualified the term in the succeeding subsection (a)(2); whereas "[subsection (a)(1)] speaks broadly of 'any interest . . . acquired,' . . . [subsection (a)(2)] reaches only 'any interest in . . . any enterprise which [the

defendant] has established[,] operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.'" *Id.* at 23. The Court, however, "refrain[ed] from concluding [] that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship." *Id.* It explained:

> "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972). See *United States v. Wooten*, 688 F.2d 941, 950 (4th Cir. 1982). Had Congress intended to restrict § 1963(a)(1) to an interest in an enterprise, it presumably would have done so expressly as it did in the immediately following subsection (a)(2). See *North Haven Board of Education v. Bell*, 456 U.S. 512, 521 (1982); *United States* v. *Naftalin*, 441 U.S. 768, 773-774 (1979).

*Id.*

Therefore, in accordance with the principles of statutory interpretation described in *Russello*, the differing language in the two subsections of the Graves Amendment's savings clause should not be given the same meaning. That reading, moreover, is supported by Congress's use of the disjunctive "or" to decouple subsections (b)(1) and (b)(2), thus indicating that a financial responsibility law need not satisfy

both the language of (b)(1) and (b)(2) to be preserved from preemption. *See F.C.C. v. Pacifica Found.*, 438 U.S. 726, 739-40 (1978) (noting the rule of statutory construction that courts are obliged to give effect, if possible, to every word Congress uses, applies particularly where Congress sets words or phrases apart using the disjunctive "or," which indicates that each has separate meaning). *See also Vargas v. Enterprise Leasing Co.*, 993 So. 2d 614, 636 (Fla. Dist. Ct. App. 2008) (en banc) (Hazouri, J., dissenting) (criticizing the decision below as rendering subsection (b)(2) mere surplusage). Had Congress intended to restrict subsection (b)(2) to those financial responsibility or insurance laws that apply as a condition of registration, it would have done so expressly as it did in subsection (b)(1).

Should this Court accept review of the important constitutional question presented, the cannon of constitutional avoidance suggests that this Court should also review the federal statutory question discussed here. *See Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 348 (1936) (Brandeis, J., concurring) ("'When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.'").

## IV. THE DECISION BELOW ERRED IN CONCLUDING THAT SANTOS RUIZ DID NOT APPEAL THE DISTRICT COURT'S ORDER AGAINST HIM.

As discussed above, should this Court grant review of the first two questions presented, it should also consider the third question presented. But if it

does not, there is no need to separately consider this question. *See* supra 14 n.5.

The court of appeals' conclusion that the Ruiz estate did not appeal the district court's order entered against him is incorrect. It was objectively clear from the notice of appeal filed in the Garcia removal action by counsel representing both the Garcia and Ruiz estates that the Ruiz estate, in addition to the Garcia estate, intended to appeal the identical orders entered in those consolidated cases. *See* Fed. R. App. P. 3(c). The notice of appeal lists the individual case numbers of each of the three consolidated cases—the declaratory judgment action, to which both the Garcia and Ruiz estates are parties; the Garcia removal action, to which the Garcia estate, but not the Ruiz estate, is a party; and the Ruiz removal action, to which the Ruiz estate, but not the Garcia estate, is a party. *See* Notice of Appeal, Dist. Ct. Case No. 5:06-cv-220, Doc. No. 54 at 1 n.1 (May 10, 2007). App. 57a. And the notice states, "[T]his Notice of Appeal serves to Notice Appeals in all three consolidated cases." *Id.* Thus, the notice of appeal—which was filed by counsel for the Ruiz estate, which listed the individual case number assigned to the Ruiz removal action, and which was served on the party-defendants in the Ruiz removal action (Vanguard)—provided fair notice that the Ruiz estate intended to appeal. *See* Fed. R. App. P. 3(c) advisory committee's note ("[A]n attorney representing more than one party [has] the flexibility to indicate which parties are appealing without naming them individually.").

Vanguard read the notice of appeal precisely in that way. In response to the court of appeal's request for briefing on jurisdiction, Vanguard

explained, "This appeal arises out of two orders entered in one case but addressing three consolidated cases. . . ." Vanguard's Response to the Court's Jurisdictional Question at 3, filed June 7, 2007. Moreover, it argued, "[T]his Court has jurisdiction over the final orders at issue to the extent they pertain to the two personal injury actions," *id.* at 5, in other words, the Garcia removal action and the Ruiz removal action. *See* also *id.* at 6 (arguing that "this Court has clear jurisdiction over the same orders as they pertain to the related declaratory action," to which both the Garcia estate and the Ruiz estate were party-defendants). Even after the court of appeals dismissed the portion of the appeal concerning these two personal injury actions and retained appellate jurisdiction over the declaratory judgment action, Vanguard, in the Certificate of Interested Persons that accompanied their Answer Brief, recognized Santos Ruiz, the administrator of the Ruiz estate, as "Plaintiff-Appellant." Vanguard Answer Br. C3-4.

Although the court of appeal's order allowing the appeal to proceed in part and dismissing the appeal in part refers to Santos Ruiz as "Plaintiff," not "Appellant," as did the caption of the order, counsel for the Garcia and Ruiz estates did not understand that order as indicating that the Ruiz estate had not appealed at all. That caption tracked the caption of the designated lead case (the Garcia removal action), and was similar to the caption in the single final judgment entered against both the Garcia and Ruiz estates.

Moreover, the fact that the court of appeals considered whether it had appellate jurisdiction over the Ruiz removal action, in addition to the

declaratory judgment action and the Garcia removal action, indicated to counsel that this Court understood the notice of appeal as indicating that the Ruiz estate intended to appeal. Had the court of appeals, in considering its jurisdiction, read the notice of appeal as indicating only that the Garcia estate had intended to appeal the orders entered in the declaratory judgment action and in the Garcia removal action, it would not have had a basis to consider whether the orders entered in the Ruiz removal action were final appealable orders. Indeed, that jurisdictional inquiry necessarily presupposes that the Ruiz estate intended to, and did, appeal. Petitioners, like Vanguard, read the notice of appeal to indicate plainly that the Ruiz estate intended to appeal, and the court of appeal's separate consideration of its appellate jurisdiction over the Ruiz removal action confirmed that reading. The decision below, which for the first time in this litigation stated that the Ruiz estate, represented by Santos Ruiz, was not a party to this appeal, is not correct.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

December 17, 2008

John Vail*
Andre M. Mura
CENTER FOR
CONSTITUTIONAL
LITIGATION, P.C.
777 Sixth Street, N.W.
Suite 520

Washington, DC 20001

*Counsel for Petitioners*

*Counsel of Record

# APPENDIX

## TABLE OF CONTENTS

# APPENDIX A

## OPINION OF THE UNITED STATES COURT OF APPEAL, ELEVENTH CIRCUIT (AUGUST 19, 2008)

MARIA D. GARCIA, *et al.*, Appellants,
v.

VANGUARD CAR RENTAL USA, INC., *et al.*, Appellees.

No. 07-12235

Appeals from the United States District Court
for the Middle District of Florida
No. 06-00220-CV-OC-10-GRJ

(Honorable Wm. Terrell Hodges, District Court Judge)

Argued January 14, 2008
Decided August 19, 2008

Before EDMONDSON, Chief Judge, KRAVITCH and ALARCON,* Circuit Judges.

KRAVITCH, Circuit Judge:

These consolidated declaratory judgment and wrongful death actions require us to interpret the Graves Amendment, 49 U.S.C. § 30106, a federal tort reform statute which purports to shield rental car

---

* Honorable Arthur L. Alarcon, United States Circuit Judge for the Ninth Circuit, sitting by designation.

companies from certain vicarious liability suits. We conclude that the tort claims at issue are within the Amendment's preemption clause and not within its savings clause. We further conclude the statute is within Congress's Article I powers. Accordingly, we affirm the grant of summary judgment in favor of the rental car companies.

## I.

The pertinent facts are undisputed. The appellee rental car companies[1] leased a car to Gregory Davis on February 2, 2005. They were not negligent or otherwise at fault in so doing. Davis rented the car in Orlando, Florida and drove it north towards Georgia. The record does not establish whether Davis embarked on his trip intending for it to be an interstate journey. On the trip, Davis was involved in a three-car accident in Marion County, Florida, for which he was allegedly at fault. The collision caused the deaths of Jose Garcia, appellant's decedent, and Nelson Ruiz, whose estate was a party in the district court but has not appealed. Israel Lopez was also severely injured, but fortunately was not killed.

Anticipating a suit alleging vicarious liability for Davis' negligence, Vanguard filed a declaratory judgment action in the district court against Lopez and the estates and surviving spouses of Garcia and Ruiz. Jurisdiction was based on diversity. The Vanguard companies sought a declaration that the Graves Amendment preempted any claims against them for wrongful death or bodily injury caused by

---

[1] The appellees, referred to as Vanguard hereafter, own interests in the rental car at issue.

their lessee Davis. The estates and surviving spouses of Garcia and Ruiz then filed separate wrongful death actions in Florida state court. The state court actions were removed and consolidated with the declaratory judgment action, and the district court dismissed several corporate parties it found were fraudulently joined to defeat diversity jurisdiction. On cross-motions for summary judgment, the district court issued a thorough and well-written opinion holding that the Graves Amendment validly preempted all the tort claims, and thus, it granted summary judgment for the rental car companies in all three cases. This appeal ensued.

## II.

We must first determine whether the Graves Amendment, by its terms, preempts these wrongful death actions. Of course, a valid federal statute preempts any state law with which it actually conflicts. See, e.g., *Foley v. Luster*, 249 F.3d 1281, 1286 (11th Cir. 2001). These suits were brought against Vanguard, which concededly was not culpable in renting a car to Davis, because of the so-called dangerous instrumentality doctrine. Through that doctrine, Florida common law "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000) (citing Southern Cotton Oil Co. v. Anderson, 86 So. 2d 629,637 (Fla. 1920). The doctrine applies to commercial motor vehicle lessors such as Vanguard.

In 1999, the Florida legislature imposed statutory caps on the amount of vicarious liability rental car

companies could face under the dangerous instrumentality doctrine. As pertinent here, the statute provides that

> The lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, shall be deemed the owner of the vehicle for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith only up to $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage. If the lessee or operator of the vehicle is uninsured or has any insurance with limits less than $500,000 combined property damage and bodily injury liability, the lessor shall be liable for up to an additional $500,000 in economic damages only arising out of the use of the motor vehicle.

Fla. Stat. § 324.021(9)(b)(2). Thus, the statute explicitly countenances the type of lawsuits at issue here - those imposing strict liability against a rental car company for the negligent acts of its lessee - while imposing a damages cap on them. It also reduces the rental company's liability exposure if a lessee is insured for $500,000 or more.

The Graves Amendment takes aim at precisely these types of lawsuits. The Amendment has two operative provisions, a preemption clause and a savings clause. The preemption clause provides as follows:

> An owner of a motor vehicle that rents or leases the vehicle to a person (or an

> affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof by reason of being the owner of the vehicle (or an affiliate of the owner) for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if (l) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles, and (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

49 U.S.C. § 30106(a). The instant wrongful death claims are clearly within the scope of this provision. Vanguard and its affiliates are in the rental car business. Vanguard owned the rental car driven by Davis and leased it to him, and the accident occurred during the lease period. Plaintiffs seek to recover solely under a vicarious liability theory: Vanguard is allegedly liable "by reason of being the owner of the vehicle" negligently driven by Davis, not because of any negligent entrustment or other wrongdoing of its own. Thus, assuming for now that the statute is constitutional, these wrongful death suits are preempted by § 30106(a) unless they are within the statute's savings clause. It provides that

> Nothing in this section supersedes the law of any state or political subdivision thereof
>
> (1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of

> registering and operating a motor vehicle; or
>
> (2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under state law.

49 U.S.C. § 30106(b). Appellants contend their suits are within the savings clause because Florida's imposition of vicarious liability on rental car companies for the negligence of their lessees is a financial responsibility law. To evaluate this argument, we must review the pertinent law of statutory interpretation.

The Graves Amendment does not define the term "financial responsibility." When statutory terms are undefined, we typically infer that Congress intended them to have their common and ordinary meaning, unless it is apparent from context that the disputed term is a term of art. *Konikov v. Orange Cty*, Fla., 410 F.3d 1317,1329 (11th Cir. 2005) (citation omitted). When Congress employs a term of art, it presumptively adopts the meaning and "cluster of ideas" that the term has accumulated over time. Medical Transport Mgmt. Corp v. Comm'r, Internal Revenue Service, 506 F.3d 1364, 1368-69 (11th Cir. 2007) (citations omitted). In construing an ambiguous statute, we also employ canons of construction which embody sound generalizations about Congressional intent. One such canon is *noscitur a sociis,* which is the commonsense principle that statutory terms, ambiguous when considered alone, should be given related meaning when grouped together. See, e.g, *S.D. Warren Co. v. Maine Bd. Of Env. Protection*, 547 U.S. 370, 378 (2006)

(citations omitted). By construing proximate statutory terms in light of one another, courts avoid giving "unintended breadth to the acts of Congress." *Gustafson v. Alloyd Co. Inc.*, 513 U.S. 561, 575 (1995) (quoting *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961)). Another pertinent canon is the presumption against surplusage: we strive to give effect to every word and provision in a statute when possible. *Lowery v. Alabama Power Co.*, 483 F.3d 1184, 1204 (11th Cir. 2007) (citations omitted). In addition to canons of construction, we may turn to legislative history as an interpretive aid. We may consult legislative history to elucidate a statute's ambiguous or vague terms, but legislative history cannot be used to contradict unambiguous statutory text or to read an ambiguity into a statute which is otherwise clear on its face. *Id.* at 1205 (citations omitted). Moreover, when we consult legislative history, we do so with due regard for its well-known limitations and dangers. See *Exxon Mobil Corp v. Allapattah Svcs., Inc.*, 545 U.S. 546, 568-70 (2005) (discussing potential pitfalls in employing legislative history).

With these interpretive principles in mind, we conclude that Congress used the term "financial responsibility law" to denote state laws which impose insurance-like requirements on owners or operators of motor vehicles, but permit them to carry, in lieu of liability insurance per se, its financial equivalent, such as a bond or self-insurance.[1] First, statutory

---

[1] Such duties may arise as a condition of licensing or registration, or, as in Florida, after a motorist has been involved in an accident. See Fla. Stat. § 324.011; see also *Lynch-Davidson Motors v. Griffin*, 182 So.2d 7, 8 (Fla. 1966).

context and the *noscitur a sociis* canon suggest as much. Both provisions of the savings clause strongly imply that financial responsibility is closely linked to insurance requirements: the savings clause exempts from preemption laws "imposing financial responsibility or insurance standards," § 30106(b)(1), or laws penalizing the "failure to meet the financial responsibility or liability insurance requirements under state law." § 30106(b)(2). This pairing of terms strongly suggests that "financial responsibility" refers to insurance-like requirements.

Second, the most common legal usage of the term "financial responsibility" is to refer to state laws which require either liability insurance or a functionally equivalent financial arrangement. Florida law is representative in providing that the owner of a motor vehicle "may prove his or her financial responsibility" by furnishing proof of liability insurance, posting a bond, furnishing a certificate showing a deposit of cash or securities, or furnishing a certificate of self-insurance. Fla. Stat. § 324.031. These other financial arrangements, like insurance, provide "proof of ability to respond in damages on account of crashes arising out the use of a motor vehicle," which is Florida law's definition of "proof of financial responsibility." See Fla. Stat. § 324.021(7). Appellant provides no reason for us to believe Florida law is exceptional in so defining financial responsibility. Likewise, Black's Law Dictionary defines financial responsibility only to include requirements that motorists have proof of "insurance or other financial accountability." See Black's Law Dictionary at 663 (8th ed. 2004). Again, we see the ubiquitous association of "financial responsibility" with insurance requirements. An insurance treatise relied upon by appellants suggests

a similar meaning to Black's, but also notes that "financial responsibility" laws may be used to refer to statutes which suspend a motorist's license or vehicle registration if they fail to satisfy a judgment resulting from an accident. 15 Russ & Segalla, *Couch on Insurance*, §§ 109:34, 109:45-46. Appellants seize on this definition and urge that Florida's vicarious liability regime is therefore part of a financial responsibility scheme: it gives rise to judgments against lessors, which they must pay on pain of cancelled registration. See Fla. Stat § 324.121 (suspension of license or registration upon notice of an unsatisfied judgment). Therefore, appellants argue, vicarious liability is part of the financial responsibility laws.

This argument is unpersuasive because it runs afoul of the presumption against surplusage. If we construe the Graves Amendment's savings clause as appellants wish, it would render the preemption clause a nullity. Every vicarious liability suit would be rescued because it could result in a judgment in favor of an accident victim, even though the judgment is premised on the very vicarious liability the Amendment seeks to eliminate. The exception would swallow the rule. We will not choose such an interpretation when another one is feasible. Appellants protest that their reading would not render the preemption clause superfluous because regimes like Fla. Stat. §324.021(9)(b)(1)-(2), which cap the amount of vicarious liability damages, would be preserved, while uncapped damages would be preempted. In support, they cite statements from the Amendment's legislative history, where its sponsors express concern with "unlimited" vicarious liability. See 151 Congo Rec. HI034-01 at 1201 (Statement of Rep. Boucher); *id.* at 1202 (Statement of Rep.

Graves). Yet read in context, the statements expressing concern with unlimited vicarious liability do not manifest any approval, explicit or implicit, of limited vicarious liability. More importantly, we see no textual support in the Graves Amendment itself for such a distinction. The distinction Congress drew is between liability based on the companies' own negligence and that of their lessees, not between limited and unlimited vicarious liability.

Appellants also argue that we should construe Florida's vicarious liability regime as a financial responsibility law to serve statutory and public policy goals. They urge that Fla. Stat. § 324.021(9)(b)(2) is a financial responsibility law because it induces car rental companies to ensure that their lessees are adequately insured, thereby serving the purpose of the financial responsibility laws, ensuring compensation for accident victims. The Florida statute achieves this purpose by reducing the companies' liability exposure if their lessees meet the statutory minimum requirements for liability insurance or other financial responsibility. But not every inducement to lease only to the insured thereby becomes a financial responsibility law. As explained above, financial responsibility laws are legal requirements, not mere financial inducements imposed by law. Moreover, the inducement appellants rely upon is again premised upon the very vicarious liability the Graves Amendment seeks to eliminate. This argument, too, fails to convince us that imposition of vicarious liability is within the Amendment's savings clause.

In sum, neither the common law imposition of vicarious liability on rental car companies, nor the Florida legislature's endorsement of and limitations on such vicarious liability, constitutes a "financial

responsibility" requirement. To the contrary, the import of the Graves Amendment is clear. States may require insurance or its equivalent as a condition of licensing or registration, or may impose such a requirement after an accident or unpaid judgment. 49 U.S.C. § 30106(b)(1). They may suspend the license and registration of, or otherwise penalize, a car owner who fails to meet the requirement, or who fails to pay a judgment resulting from a collision. 49 U.S.C. § 30106(b)(2). They simply may not impose such judgments against rental car companies based on the negligence of their lessees. 49 U.S.C. § 30106(a).

III.

Because the Graves Amendment purports to preempt this lawsuit, we must next determine its constitutionality. Appellants contend the statute cannot be applied to preempt their suits because it is outside Congress's commerce powers.

The commerce power - that is, the combination of the Commerce Clause per se and the Necessary and Proper Clause - encompasses authority to regulate three categories of activities. The first is the use of the "channels" of interstate commerce, the "interstate transportation routes through which persons and goods move." See, e.g, *United States v. Ballinger*, 395 F.3d 1218, 1225 (11th Cir. 2005) (en banc) (citations omitted). It is clear that the Amendment does not directly regulate the channels of commerce nor their use. Neither the rental car market, nor the imposition of vicarious liability on rental car firms, are in any respect a regulation of roads as such. Nor is the Graves Amendment an effort to protect roads from harm, nor to prevent

them from being used for harmful purposes. *See id.* at 1226.

Second, Congress may regulate the so-called "instrumentalities" of commerce. This category includes at a minimum "persons and things themselves moving in interstate commerce." *Ballinger*, 395 F.3d at 1226. And *Ballinger* arguably suggests, without explicitly stating, that persons and things moving in interstate commerce is the full extent of the instrumentalities category. But there is also some authority for the proposition that methods of interstate transportation and communication are per se instrumentalities of commerce, regardless of whether the car (or the like) at issue in a particular case has crossed state boundaries or is otherwise engaged in interstate commerce.[2] If cars are per se instrumentalities of commerce, even when not employed in interstate commerce, this is an easy case. Congress may protect instrumentalities of

---

[2] See, e.g., *United States v. Pipkins*, 378 F.3d 1281, 1295 (11th Cir. 2004) (suggesting pagers, telephones, and the Internet are per se instrumentalities of commerce, regardless of whether any interstate communications or routing occur), vacated and remanded on other grounds, 544 U.S. 902 (2005), opinion reinstated on remand 412 F.3d 1251 (11th Cir. 2005). See also *United States v. Bishop*, 66 F.3d 569,589-90 (3rd Cir. 1995) (Congress may criminalize intrastate carjackings because cars are per se instrumentalities of commerce); *United States v. Oliver*, 60 F.3d 547,550 (9th Cir. 1995) (same). See also *United States v. Williams*, 51 F.3d 1004 (11th Cir. 1995), abrogated in part on other grounds, *Jones v. United States*, 526 U.S. 227 (1999) and *United States v. Hutchinson*, 75 F.3d 626 (11th Cir. 1996) (both summarily concluding that federal carjacking statute is constitutional notwithstanding Lopez).

commerce from purely intrastate threats and burdens, *United States v. Lopez*, 514 U.S. 549,558 (1995), and there is no authority prohibiting preemption of burdensome state laws as a means of doing so.

But the implications of this argument give us reason to doubt its premise. If cars are always instrumentalities of commerce, as suggested by *Bishop*, Congress would have plenary power not only over the commercial rental car market, but over many aspects of automobile use. See, e.g., *United States v. Hornaday*, 392 F.3d 1306, 1311 (llth Cir. 2004) (Commerce Clause power is plenary within its scope). Further, because such power would derive from the Commerce Clause per se, Congress could exercise even broader power to make laws necessary and proper to effectuate its plenary power over automobiles including, presumably, regulation of such quintessentially state law matters as traffic rules and licensing drivers, under the banner of protecting the instrumentalities of commerce. We have our doubts about an interpretation which produces these results, which makes us suspect the premise that all methods of transportation and communication are per se instrumentalities of commerce even when they are not used in interstate commerce. Moreover, there is sensible authority that channels and instrumentalities of commerce refer only to "the ingredients of interstate commerce itself." *Gonzalez v. Raich*, 545 U.S. 1, 34 (2005) (Scalia, J., concurringin the judgment) (citing *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 189-90 (1824)); see also *Bishop*, 66 F.3d at 597-600 (Becker, J., dissenting) (automobiles can be used as instrumentalities of commerce, but are not per se

instrumentalities subject to plenary federal regulation).

Congress has very broad power to regulate wholly intrastate uses of the means of interstate transportation and communication. But it appears more likely that such authority derives not from their status as instrumentalities, but from the Necessary and Proper Clause.[3] The distinction is not academic; although we ultimately would reach the same result under Lopez prongs two or three, the reasons for the outcome would differ markedly. Should we recognize rental cars as per se instrumentalities of commerce, as appellees and the United States' *amicus* brief would have us do, our analysis ends with the recognition that Congress may protect instrumentalities of commerce from intrastate threats and burdens. In contrast, if rental cars are not per se instrumentalities of commerce, and the statute does not restrict its application to suits involving rental cars that are instrumentalities, *i.e.* "in commerce," then we must analyze the statute as regulating an activity "affecting commerce," and as we shall see, the precedent grows thinner. Given the dubious implications of construing all automobiles as per se instrumentalities of commerce, we will pass over that question; the more prudent course is for us to decide the Graves Amendment's

---

[3] Compare *Bishop* and *Pipkins*, *supra*, *with Heart of Atlanta Motel Inc. v. United States*, 379 U.S. 241, 271 (1964) (Black, J., concurring) (power to regulate intrastate use of instrumentalities because such uses burden commerce derives from Necessary and Proper Clause), *and Raich*, 545 U.S. at 34 (Scalia, J., concurring in the judgment) (power to regulate activities that are not actually in interstate commerce must derive from Necessary and Proper Clause).

constitutionality under the third Commerce Clause prong.

The final and most hotly contested facet of the commerce power is the authority to regulate purely intrastate activities when they "substantially affect" or have a "substantial relation to" interstate commerce. Ballinger, 395 F.3d at 1226 (citations omitted). "When economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained." *Raich v. Gonzales*, 545 U.S. at 25 (citing *United States v. Morrison*, 529 U.S. 598, 610 (2000)). One implication of this principle is that where Congress comprehensively regulates the national market for a particular good or activity, courts may not pronounce particular intrastate instances of the regulated conduct to have a de minimis effect on the market and therefore to be outside the commerce power. *Id.* at 17-19 (citing, inter alia, *Wickard v. Filburn*, 317 U.S. 111 (1942)). This approach to the third prong of commerce jurisprudence, embodied most dramatically by *Raich* and *Wickard*, is commonly described as "aggregation": when the aggregate effects of an economic activity substantially affect interstate commerce, Congress may regulate both interstate and intrastate instances of that activity, the latter being necessary and proper to effective regulation of the former.

Yet the Supreme Court has made clear that aggregation analysis is not always appropriate. In the seminal cases of *United States v. Morrison*, 529 U.S. 598 (2000) and *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court refused to validate the Violence Against Women Act and the Gun-Free School Zones Act, respectively, because of the purported aggregate effects of gender motivated

violence and school violence on interstate commerce. Rather, in considering the permissibility of those statutes under the commerce power, the Court focused on four "significant considerations": (i) whether the activity regulated was economic in nature, (ii) whether the statute contained jurisdictionally limiting language, (iii) whether Congress made findings concerning the effect of the regulated activity on commerce, and (iv) whether the connection between the regulated activity and an effect on commerce is attenuated. *Morrison*, 529 U.S. at 609-617 (citations omitted). The upshot of Morrison and Lopez is that Congress may not "regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." *Id.* at 617. In practice, review under the "significant considerations" of *Lopez* and *Morrison* is significantly less deferential than under aggregation analysis. Under the latter, Congress need only have a rational basis for concluding that the regulated activities, in the aggregate, substantially affect interstate commerce. *Raich*, 545 U.S. at 22 (citations omitted).

Appellants argue that the test elaborated in *Morrison* and *Lopez*, rather than that in *Raich*, should be applied when, as here, we analyze a single subject statute rather than a comprehensive regulatory regime. They rely chiefly on *United States v. Maxwell*, 446 F.3d 1210, 1214 (11th Cir. 2006), where we stated that the salient difference between *Lopez* and *Raich* was "the comprehensiveness of the economic component of the regulation." (We also noted the possibility for analytic confusion after *Morrison* and *Raich*. Id. at 1216 n.6) Appellants urge that analysis under the Morrison/Lopez factors is appropriate because the Graves Amendment, like the

statute at issue in those cases, is a "brief, single-subject statute," with no statutory element requiring proof that particular instances of vicarious liability "have any connection to past interstate activity or a predictable impact on future commercial activity." See *Raich*, 545 U.S. at 23.

Despite its brevity, we believe the Graves Amendment is properly analyzed under the aggregation doctrine of *Raich*, rather than the considerations elaborated in *Morrison* and *Lopez*. *Raich* makes clear that when a statute regulates economic or commercial activity, Lopez and Morrison are inapposite. Instead, when an economic activity has a substantial effect on interstate commerce, regulation of that activity must be sustained. *Raich*, 545 U.S. at 25. There is no question that the commercial leasing of cars is, in the aggregate, an economic activity with substantial effects on interstate commerce. This is true both because of the size and national scope of the industry, and because rental cars are frequently (though perhaps not uniformly) employed as instrumentalities of interstate commerce.

Appellants protest that the Graves Amendment does not regulate the rental car market at all, but state tort law. This is a distinction without a difference, as the state tort law preempted by the statute regulates the rental car market; in other words, the effect of the statute is to deregulate the rental car market. And it has long been understood that the commerce power includes not only the ability to regulate interstate markets, but the ability to facilitate interstate commerce by removing intrastate burdens and obstructions to it. See, e.g., *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1,31-32 (1937). On this theory, the Graves

Amendment protects the rental car market by deregulating it, eliminating state imposed laws and lawsuits Congress reasonably believed to be a burden on an economic activity with substantial effects on commerce. Such a theory is relatively novel, but only because statutes like the Graves Amendment are novel. Many federal statutes expressly or impliedly preempt state tort law as an incident to federal regulation. But we are aware of only one other statute with the sole effect and purpose of preempting state-law claims because Congress believed them to be a burden on an interstate market. That is the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-7903, which preempts certain tort suits against gun manufacturers. Despite the novelty of laws like the Graves Amendment and PLCAA, there is no reason in principle why state laws or lawsuits cannot themselves constitute a burden on interstate commerce.[4] Indeed, the PLCAA recently survived a Commerce Clause challenge for essentially the reasons. explained above: the interstate character of the firearms industry, coupled with the perceived threat to that industry posed by state lawsuits, justified use of the commerce power to preempt the burdensome suits. *City of New York v. Beretta USA*

---

[4] For example, the entire premise of dormant Commerce Clause jurisprudence is that state laws favoring in-state economic interests over those of out-of-state competitors can burden interstate commerce. *See*, e.g, *Dept. of Revenue of Kentucky v. Davis*, -- U.S. ---, 128 S.Ct. 1801, 1808 (2008) (citations omitted). We do not suggest that vicarious liability against rental car companies is a form of in-state protectionism; we merely note that state laws, no less than private practices, may burden interstate commerce.

*Corp.*, 524 F.3d 384 (2nd Cir. 2008). The two cases are not identical because unlike the Graves Amendment, the PLCAA limits its preemptive effect to suits involving guns in interstate commerce. *Id.* at 394. But we do not think that distinction matters. Congress may foster and protect the entire market for rental cars because, in the aggregate, that market substantially affects interstate commerce. So long as the underlying economic activity the federal statute aims to protect is within the commerce power, we will not second guess Congress's decision that preemption is an appropriate means to achieve proper ends. Rather, Congress may choose any "means reasonably adapted to the attainment of the suited end, even though they involved control of intrastate activities." *United States v. Darby*, 312 U.S. 100, 121 (1941). For regulation (or deregulation) of intrastate activities to survive review under aggregation analysis, Congress need only have a rational basis for concluding that the intrastate activity would undermine the lawful Commerce Clause goals of a federal statute if left untouched. See *Raich*, 545 U.S. at 19.

These principles indicate that the Graves Act is valid. It is plain that the rental car market has a substantial effect on interstate commerce. It is also apparent that Congress rationally could have perceived strict vicarious liability for the acts of lessees as a burden on that market.[5] The reason it

---

[5] Statements in the Graves Act's legislative history suggest that its proponents indeed perceived vicarious liability as a burden on consumers, and as reducing the number of firms able to compete in the rental car market. *See* 151 Cong.Rec. H1034-01 at *H1200 (Statement of Rep. Graves) (stating that vicarious liability costs consumers $100 million annually and drives small firms

could have done so is that the costs of strict vicarious liability against rental car companies are borne by someone, most likely the customers, owners, and creditors of rental car companies. If *any* costs are passed on to customers, rental cars - a product which substantially affects commerce and which is frequently an instrumentality of commerce - become more expensive, and interstate commerce is thereby inhibited. Moreover, if significant costs from vicarious liability are passed on to the owners of rental car firms, it is possible that such liability contributes to driving less-competitive firms out of the marketplace, or inhibits their entry into it, potentially reducing options for consumers. We do not know with any certainty the incidence or effect of these costs, and we do not have to know. It is enough that Congress rationally could have perceived a connection between permissible ends, namely increasing competition and lowering prices in the rental car market, and the means it chose to effectuate them, preempting vicarious liability suits.

In sum, the Graves Amendment preempts the tort claims on appeal, and is within the boundaries of Congressional power in so doing. Accordingly, the claims cannot proceed. The district court's judgment is

**AFFIRMED.**

---

out of business); *see* also 151 Congo Rec. S5433-03 (Statement of Sen. Santorum) (similar). We would reach the same result in the absence of such statements.

## APPENDIX B

## ORDER OF THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT (NOVEMBER 18, 2008)

MARIA D. GARCIA, *et al.*, Appellants,
v.

VANGUARD CAR RENTAL USA, INC., *et al.*, Appellees.

No. 07-12235

Appeals from the United States District Court
for the Middle District of Florida
No. 06-00220-CV-OC-10-GRJ

(Honorable Wm. Terrell Hodges, District Court Judge)

Argued January 14, 2008
Decided August 19, 2008

**Order Denying Motion to Recall the Mandate and to Correct the Judgment**

Appellant's motion to recall the mandate issued in this appeal and to "correct" the Court's Judgment and decision is DENIED. Aside from the tardiness of Appellant's motion, the Court does not agree that it was objectively clear from the notice of appeal that Plaintiff Santos Ruiz intended to appeal. See Fed.R.App.P. 3(c), Advisory Committee Notes to the 1993 Amendments.

## APPENDIX C

## OPINION OF THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA (MARCH 5, 2007)

MARIA D. GARCIA, *et al.*, Plaintiffs,

v.

VANGUARD CAR RENTAL USA, INC., *et al.*, Defendants.

No. 5:05-cv-00422-WTH-GRJ

Argued January 22, 2007
Decided March 6, 2007

**Order Granting Vanguard's Motion for Summary Judgment in Case No. 5:06-cv-220-Oc-10GRJ and Directing the Clerk to Enter Judgment in Favor of Vanguard Car Rental USA, Inc., *et al.***

On August 10, 2005, President Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"), Pub. L. No. 109- 59, 119 Stat. 1144. Included in this law are provisions codified at 49 U.S.C. § 30106 (the "Graves Amendment") which expressly preempt all state vicarious liability schemes that impose liability on lessors of motor vehicles where the vehicle is involved in an accident through no fault of the lessor. The application of this recently-enacted law is at the heart of this and two other related lawsuits pending in this Court, all

three of which revolve around a car accident that occurred in Marion County, Florida, on February 2, 2005.

These three related cases are now before the Court for consideration of Defendants Vanguard Car Rental USA, Inc., Vanguard Rental (Belgium) Inc., National Rental (US) Inc., Alamo Financing, L.P., and Alamo Rent-A-Car (Canada) Inc.'s Motion for Summary Judgment (Doc. 26).[1] These Defendants contend that the Graves Amendment preempts all of the Plaintiffs' state law claims against them which are premised on a theory of vicarious liability. The Plaintiffs have filed a response in opposition (Doc. 31), and the motion is ripe for disposition. For the reasons discussed below, the Court finds that the Lessor Defendants' motion is due to be granted.

## FACTUAL BACKGROUND AND PROCEDURAL HISTORY

### I. The Parties

The relevant facts are not in dispute. Defendants Vanguard Car Rental USA, Inc., National Rental (US), Inc., and Alamo Financing, L.P., (collectively the "Lessor Defendants"), are in the business of renting automobile vehicles to customers on a

---

[1] The Defendants have styled their motion as "Petitioners' Motion for Summary Judgment" apparently in recognition of the fact that they are the Petitioners in a related declaratory judgment action, Case No. 5:05-cv-422-Oc-10GRJ, which the Court consolidated with the present case for all pre-trial proceedings. However, because the Court directed that all pre-trial filings be made in the present case, the Court will refer to the Petitioners as Defendants.

shortterm basis of less than one year.[2] On February 2, 2005, Defendant Gregory Davis rented a Dodge Stratus from the Lessor Defendants in Orlando, Florida and began driving to Georgia. While traveling through Marion County, Florida, Davis was involved in a three-car accident. As a result of the accident, the driver and front-seat passenger of one of the other vehicles - Jose Garcia and Nelson Agustin Ruiz - were killed, and the back seat passenger - Israel Lopez - suffered serious injuries. It is alleged that Davis caused the accident, and the Lessor Defendants do not challenge this theory. However, all Parties agree that the Lessor Defendants were neither negligent nor engaged in any criminal wrongdoing which contributed to the accident.

## II. Procedural History

As a result of this tragic accident, three separate lawsuits are now pending in this Court. The first is this case, a wrongful death lawsuit filed on May 26, 2006 by Plaintiff Maria D. Garcia, as the surviving spouse and personal representative of the Estate of Jose Garcia, and on behalf of her minor children, Gabriela Garcia and Luis Garcia. (Doc. 2). The Plaintiff originally filed this case against all of the

---

[2] The Court previously determined that the other two corporate Defendants, Vanguard Rental (Belgium) Inc., and Alamo Rent-A-Car (Canada) Inc., were fraudulently joined in this case in an attempt to defeat diversity jurisdiction, and that the Plaintiffs have no claims against them. (Docs. 21, 32). Nevertheless, they remain parties in this case for purposes of an appeal (should there be one), and the Court's ruling on the present motion for summary judgment will apply equally to them.

Defendants in the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida. The Defendants removed the case to this Court on June 29, 2006 on the basis of diversity jurisdiction. The Plaintiff moved to remand (Doc. 11), but the Court denied that motion on December 27, 2006 (Doc. 32).

The second case is a wrongful death lawsuit against the same Defendants filed by Plaintiffs Santos Ruiz and Agripina Borjas Miralda, individually, and Santos Ruiz as administrator and personal representative of the Estate of Nelson Ruiz and as legal guardian of Nelson Xavier Ruiz. *See Ruiz v. Vanguard Car Rental USA, Inc., et al.*, Case No. 5:06-cv-221-Oc-10GRJ (Doc. 2). The *Ruiz* Plaintiffs also filed their case in the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida, and the Defendants removed the case to this Court on June 29, 2006. The Court denied the *Ruiz* Plaintiffs' motion to remand on December 27, 2006.[3]

The third, and oldest case is a declaratory judgment action filed by the Lessor Defendants against the *Garcia* and *Ruiz* Plaintiffs, as well as Israel Lopez, on October 7, 2005. See *Vanguard Car Rental USA, Inc. et al. v. Maria Garcia, et al.*, Case No. 5:05-cv- 422-Oc-10GRJ (Doc. 1). In the declaratory judgment action, the Lessor Defendants seek a ruling from the Court that the Graves Amendment preempts all State laws, including Florida's, which impose vicarious liability on the lessor of a motor vehicle where the lessor is not negligent or criminally liable for any injuries or damages. The Lessor Defendants seek a ruling that they cannot be held vicariously liable for any

---

[3] *See* Case No. 5:06-cv-221 Oc-10-GRJ, Doc. 22.

damages or injuries resulting from the February 2, 2005 accident involving Garcia, Ruiz, and Lopez.[4]

On November 1, 2006, the Magistrate Judge entered an Order consolidating all three related cases for purposes of pre-trial proceedings, and directed that all further filings be made in the *Garcia* case. (Doc. 22). The Order also permitted the Lessor Defendants to file in this case a single motion for summary judgment focused on the question of whether the Graves Amendment preempts the *Garcia* and *Ruiz* claims. The Lessor Defendants did so on November 13, 2006 (Doc. 26), and the *Garcia* and *Ruiz* Plaintiffs filed their joint memorandum in opposition on December 4, 2006 (Doc. 31). The Parties agree that resolution of this motion in favor of the Lessor Defendants would resolve all claims against the Lessor Defendants in the *Garcia* and *Ruiz* cases, and would also resolve the declaratory judgment action.

## SUMMARY JUDGMENT STANDARD

Pursuant to Federal Rule of Civil Procedure 56(c), the entry of summary judgment is appropriate only when the Court is satisfied that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In applying this standard, the Court must examine the pleadings, depositions, answers to interrogatories,

---

[4] The Plaintiffs moved to dismiss the declaratory judgment action, which the Court denied on December 27, 2006 (Case No. 5:05-cv-422-Oc-10-GRJ, Docs. 12, 50). The Lessor Defendants have settled all claims against Israel Lopez stemming from the declaratory action, and Lopez is no longer a party to any cases before this Court. See Case No. 5:05-cv-422-Oc-10-GRJ, Docs. 46-48.

and admissions on file, together with any affidavits and other evidence in the record "in the light most favorable to the nonmoving party." *Samples on Behalf of Samples v. Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988). As the Supreme Court held in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), the moving party bears the initial burden of establishing the nonexistence of a triable issue of fact. If the movant is successful on this score, the burden of production shifts to the non-moving party who must then come forward with "sufficient evidence of every element that he or she must prove." *Rollins v. Techsouth*, 833 F.2d 1525, 1528 (11th Cir. 1987). The non-moving party may not simply rest on the pleadings, but must use affidavits, depositions, answers to interrogatories, or other admissible evidence to demonstrate that a material fact issue remains to be tried.

## DISCUSSION

The first question involves application of the Graves Amendment to Florida law. There appears to be agreement that the Graves Amendment preempts Florida's common law vicarious liability scheme as it pertains to lessors of motor vehicles. The dispute is whether Florida Statute § 324.021(9)(b)(2), establishing damages caps on such vicarious liability claims, creates a separate and distinct cause of action against lessors of motor vehicles which is not preempted by the Graves Amendment.

The second question is whether the Graves Amendment is a constitutional exercise of Congress' preemptive powers under the Commerce Clause of the United States Constitution, Article I, § 8. The only parties challenging this statute's constitutionality are the *Garcia* and *Ruiz* Plaintiffs.

The constitutional issue arises in the event the Court first determines that the Graves Amendment preempts all of the Plaintiffs' claims against the Lessor Defendants.

## I. Does the Graves Amendment Preempt Florida Statute § 324.021(9)(b)(2)?

In their motion for summary judgment, the Lessor Defendants argue that Florida Statute § 324.021(9)(b)(2) merely sets forth caps on damages for which a lessor of motor vehicles could be held vicariously liable under Florida law. Because the Graves Amendment preempts such vicarious liability claims, it must necessarily also preempt any statutes setting damages caps on such claims. The Plaintiffs, however, argue that the Graves Amendment does not erase the Lessor Defendants' liability, because Fla. Stat. § 324.021(9)(b)(2) is really a "financial responsibility law" that creates a separate cause of action against lessors of motor vehicles. As such, the statute is expressly exempted from the Graves Amendments' preemption provisions. In order to address this question, a brief discussion is appropriate concerning the history and purpose behind Florida's vicarious liability scheme as applied against lessors of motor vehicles.

### A. Florida's Liability Scheme

Florida's vicarious liability doctrine as it pertains to lessors of motor vehicles is largely a creation of common law, and is otherwise known as the "dangerous instrumentality doctrine." The dangerous instrumentality concept was first applied to motor vehicles by the Florida Supreme Court in 1920. *Southern Cotton Oil Co. v. Anderson*, 86 So. 629

(1920). The doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." *Estate of Villaneuva ex rel. Villanueva v. Youngblood*, 927 So. 2d 955 (Fla. Dist. Ct. App. 2006); *see also Southern Cotton*, 86 So. at 637. The dangerous instrumentality doctrine was judicially adopted based on public policy concerns:

> The dangerous instrumentality doctrine seeks to provide greater financial responsibility to pay for the carnage on our roads. It is premised upon the theory that the one who originates the danger by entrusting the automobile to another is in the best position to make certain that there will be adequate resources with which to pay the damages caused by its negligent operation. If Florida's traffic problems were sufficient to prompt its adoption in 1920, there is all the more reason for its application to today's high-speed travel upon crowded highways. The dangerous instrumentality doctrine is unique to Florida and has been applied with very few exceptions.

*Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla.2000) (quoting *Kraemer v. Gen. Motors Acceptance Corp.*, 572 So.2d 1363, 1365 (Fla.1990)).

The Florida Supreme Court extended the dangerous instrumentality doctrine to lessors, thereby making them vicariously liable for the lessee's negligent operation of the motor vehicle, in 1959. *Susco Car Rental System v. Leonard*, 112 So.

2d 832 (Fla. 1959). In 1999, the Florida Legislature passed a tort reform package which, among other things, created Florida Statute § 324.021(9)(b). This section created an exception to the dangerous instrumentality doctrine for lessors of motor vehicles. As applicable to this case, § 324.021(9)(b) provides:

> **(9) Owner, owner/lessor. –**
>
> (b) *Owner/lessor.* -- Notwithstanding any other provision of the Florida Statutes or existing case law:
>
> 1. The lessor, under an agreement to lease a motor vehicle for 1 year or longer which requires the lessee to obtain insurance acceptable to the lessor which contains limits not less than $100,000/$300,000 bodily injury liability and $50,000 property damage liability or not less than $500,000 combined property damage liability and bodily injury liability, shall not be deemed the owner of said motor vehicle for the purpose of determining financial responsibility for the operation of said motor vehicle or for the acts of the operator in connection therewith; further, this subparagraph shall be applicable so long as the insurance meeting these requirements is in effect. The insurance meeting such requirements may be obtained by the lessor or lessee, provided, if such insurance is obtained by the lessor, the combined coverage for bodily injury liability and property damage liability shall contain limits of not less than $1 million and may be provided by a lessor's blanket policy.

> 2. The lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, shall be deemed the owner of the motor vehicle for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith only up to $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than $500,000 combined property damage and bodily injury liability, the lessor shall be liable for up to an additional $500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages shall be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator. Nothing in this subparagraph shall be construed to affect the liability of the lessor for its own negligence.

Fla. Stat. § 324.021(9)(b)(1), (2).

When this statute is distilled, it means that short term lessors of automobiles are vicariously liable only up to $100,000 per person and up to $300,000 total for bodily injury and up to $50,000 for property damage arising from a vehicular accident. Further, in this instance, if Gregory Davis is found to be either uninsured or has insurance with limits less than $500,000 combined property damage and bodily injury liability, the Lessor Defendants will be liable

for up to an additional $500,000 in economic damages. Fla. Stat. § 324.021(9)(b)(2).

This statutory provision is contained within Chapter 324 of the Florida Statutes, entitled "Financial Responsibility." The purpose of Chapter 324 is set forth in Fla. Stat. § 324.011:

> It is the intent of this chapter to recognize the existing privilege to own or operate a motor vehicle on the public streets and highways of this state when such vehicles are used with due consideration for others and their property, and to promote safety and provide financial security requirements for such owners or operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle.

Section 324.021(9)(b) is but one part of a lengthy statute entitled "Definitions, minimum insurance required," which defines terms such as "owner/lessor," "motor vehicle," and "operator." Fla. Stat. § 324.021(1), (3), and (9). The statute also defines "proof of financial responsibility" as requiring "proof of ability to respond in damages for liability on account of crashes arising out of the use of a motor vehicle" in the amount of $10,000 per person or $20,000 per accident for bodily injury, and $10,000 for property damage per accident. Fla. Stat. § 324.021(7).

**B. The Graves Amendment**

Florida's vicarious liability laws concerning lessors of motor vehicles remained largely unchanged until August 10, 2005, the date the Graves

Amendment became effective. This federal statute provides, in pertinent part:

> **Section 30106. Rented or leased motor vehicle safety and responsibility.**
>
> **(a) In general.**– An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if–
>
> > **(1)** the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
> >
> > **(2)** there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).
>
> **(b) Financial responsibility laws.**– Nothing in this section supersedes the law of any State or political subdivision thereof–
>
> > **(1)** imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of

> registering and operating a motor vehicle; or
>
> (2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements
>
> under State law.
>
> **(c) Applicability and effective date.** – Notwithstanding any other provision of law, this section shall apply with respect to any action commenced on or after the date of enactment of this section without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment.

By its express language, the Graves Amendment preempts all state statutory and common law to the extent those laws hold owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers, except when there is negligence or criminal wrongdoing on the part of the owner. As it pertains to this case, the federal statute would preempt all of the Garcia and Ruiz Plaintiffs' claims against the Lessor Defendants, since the Plaintiffs' lawsuits were not filed until after August 10, 2005 and do not allege any negligence or criminal wrongdoing. In fact, neither party disputes the Graves Amendment's preemption of Florida's common-law dangerous instrumentality doctrine as it relates to lessors of motor vehicles. The question

remains, however, whether the Graves Amendment also preempts Fla. Stat. § 324.021(9)(b)(2).

### C. Application of the Graves Amendment to Fla. Stat. § 324.021(9)(b)(2)

Whether the Graves Amendment preempts § 324.021(9)(b) turns on an interpretation of the federal statute itself, namely, the meaning of the phrase "financial responsibility laws." "The starting point for [the] interpretation of a statute is always its language," *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 739 (1989), thus "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Court must therefore first review the text of the Graves Amendment itself, and if "the words of [the] statute are unambiguous, [any] judicial inquiry [would be] complete." *Id.* at 254.

The Graves Amendment does not define "financial responsibility laws," and neither side has pointed to any other provision of the SAFETEA-LU Act which defines this term. Because Congress did not define "financial responsibility laws," it must have intended to give that term its ordinary meaning. *Consolidated Bank, N.A. v. United States Dep't of Treasury*, 118 F.3d 1461, 1464 (11th Cir.1997) ("In the absence of a statutory definition of a term, we look to the common usage of words for their meaning."). Blacks Law Dictionary defines the term "financial responsibility act" as "[a] state statute conditioning license and registration of motor vehicles on proof of insurance or other financial accountability."[5] It also defines "financial

[5] Blacks Law Dictionary at 663 (8th edition, 1994).

responsibility clause" as "[a] provision in automobile insurance policy stating that the insured has at least the minimum amount of liability insurance coverage required by a state's financial responsibility law."[6] Thus, the common usage of the term "financial responsibility laws" means requiring an owner and/or operator of a motor vehicle to possess and have proof of minimum levels of insurance.[7]

Neither party disputes this interpretation of the common meaning of the term "financial responsibility laws."[8] The Plaintiffs, however,

---

[6] *Id.*

[7] Given the unambiguous and clear language of the Graves Amendment, there is no need to consider extrinsic materials, such as legislative history. *Consolidated Bank*, 118 F.3d at 1463-64. However, even if legislative intent were considered, the very limited historical materials that address the Graves Amendment support the Court's conclusion that the intent of the act is to eliminate vicarious liability, yet preserve state laws requiring minimum levels of motor vehicle insurance. *See, e.g.*, H.R. Rep. 109-14, H.R. Rep. No. 14 (March 8, 2005) (noting that the Graves Amendment "[e]liminates liability under state law for an owner of a motor vehicle or their affiliate who is engaged in the business of renting and leasing motor vehicles provided there is no negligence or criminal wrongdoing on the part of the motor vehicle owner or affiliate. The owner or affiliate must maintain the required state limits of financial responsibility for each vehicle in accordance to the state where the vehicle is registered.")

[8] In fact, the Plaintiffs point out in their response that the common purpose of financial responsibility laws is to "induce motor vehicle owners or operators to provide security for the compensation of innocent persons who are injured, in person or property, through the faulty operation of the motor vehicle." 60 C.J.S. Motor Vehicles §

contend that Fla. Stat. § 324.021(9)(b)(2) satisfies this definition. In making such an assumption, the Plaintiffs mis-interpret the two sub-paragraphs immediately following the term "financial responsibility laws" in the Graves Amendment as they apply to Florida law. These two sub-paragraphs provide further definition and guidance as to what types of "financial responsibility laws" are exempt from federal preemption.[9]

The first sub-section says that state laws which "impos[e] financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle" are not preempted. 49 U.S.C. § 30106(b)(1). The second subsection exempts state laws which "impos[e] liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law." § 30106(b)(2). In other words, both sub-sections exempt state laws that impose some sort of financial responsibility - *i.e.* insurance - requirements on

---

223. *See* Plaintiffs' Memorandum in Opposition (Doc. 31), p. 5.

[9] These more specific provisions must be considered in interpreting the entire section of the Graves Amendment concerning "financial responsibility laws." *See Stenberg v. Carhart*, 530 U.S. 914, 998 (2000) (noting that it is a "fundamental canon of construction that statutes are to be read as a whole) (Thomas, J., dissenting); *Hughey v. United States*, 495 U.S. 411, 419 (1990) ("a general statutory term [is interpreted] in light of the specific terms that surround it."); *United States v. DBB, Inc.*, 180 F.3d 1277, 1281 (11th Cir.1999) ("We do not look at one word or term in isolation, but instead we look to the entire statutory context.").

owners of motor vehicles. A review of Fla. Stat. § 324.021(9)(b)(2) shows that it does not fall within either sub-section.

The Florida Statute in question does not create insurance standards for entities that register and operate motor vehicles within Florida. Nor does it impose liability on owners of motor vehicles for failing to comply with state insurance requirements. A careful reading of § 324.021(9)(b)(2) shows that it does not impose any insurance requirements on anyone or even mention the term "financial responsibility." This section speaks solely in terms of "liability." A lessor of motor vehicles in the state of Florida could operate without any insurance whatsoever, and would never fall within the scope of § 324.021(9)(b)(2). Rather, this section simply means that if you are engaged in the business of leasing or renting motor vehicles for periods of less than a year, and if you are sued under a theory of vicarious liability, the maximum amount that you will be liable for (with or without insurance) cannot exceed $350,000.

The Plaintiffs place great emphasis on the provisions in § 324.021(9)(b)(2) which raise the liability caps by an additional $500,000 if the lessor leases a motor vehicle to someone who carries insurance of less than $500,000. According to the Plaintiffs, this sentence establishes "the outward bounds of financial responsibility – $500,000 – then uses a carrot – lower financial responsibility – to entice lessors to help assure that lessees will be financially responsible."[10] The Plaintiffs are simply wrong. First, this provision does not impose any liability on lessors for failing to meet Florida's

---

[10] See Plaintiff's Memorandum in Opposition, p. 7.

insurance requirements, it simply states that the most a motor vehicle lessor can potentially be held vicariously liable for may increase by another $500,000 in certain circumstances. It is a contingency provision, effectively creating a cost-benefit risk analysis for motor vehicle lessors. A lessor could choose to rent to operators who have lower levels of insurance without any consequences or penalties by the state. In such a situation, the lessor would merely assume the risk of possibly being liable for a higher level of damages should an accident and lawsuit ensue.

Second, and perhaps more importantly, the Court is unaware of any Florida financial responsibility or insurance requirement that owners and/or operators of motor vehicles must possess insurance in the amount of $500,000 combined property and personal injury. To the contrary, § 324.021 itself defines the minimum standards for insurance in Florida:

> Proof of financial responsibility. – That proof of ability to respond in damages for liability on account of crashes arising out of the use of a motor vehicle:
>
> (a) In the amount of $10,000 because of injury to, or destruction of, property of others in any one crash; and
>
> (b) Subject to such limits for one person, in the amount of $20,000 because of bodily injury to, or death of, two or more persons in any one crash;
>
> (c) In the amount of $10,000 because of injury to, or destruction of, property of others in any one crash . . .

Fla. Stat. § 324.021(7).[11] There is nothing in § 324.021(9)(b)(2) that imposes any penalties or liabilities on lessors of motor vehicles who do not maintain these minimum levels of insurance.[12]

While not dispositive, Florida case law supports the Court's interpretation that § 324.021(9)(b)(2) is simply a cap on strict vicarious liability damages and nothing more. See, e.g., *Lewis v. Enterprise Leasing Co.*, 912 So. 2d 349, 351 (Fla. 3d DCA 2005) ("The legislature enacted section 324.021(9)(b), Florida Statutes, in order to limit such liability and to shift responsibility for damages arising out of motor vehicle accidents from innocent owners and lessors of motor vehicles to those at fault."); *Enterprise Leasing Co. v. Hughes*, 933 So. 2d 832, 838 (Fla. 1st DCA 2002) (holding that § 324.021(9)(b)(2) "merely limits

---

[11] *See also* Fla. Stat. § 324.022 (the requirement of having sufficient financial responsibility for property damage can be met by having an insurance policy that provides coverage in the amount of at least $30,000 for combined property damage and bodily injury liability for any one crash), and Fla. Stat. § 627.733 (setting forth Florida's Motor Vehicle No-Fault Personal Injury Protection insurance standards). These statutory provisions clearly are of the type saved from preemption under the Graves Amendment, because they impose "financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle."

[12] It is Fla. Stat. § 324.051, for example, that achieves this object by authorizing the State to suspend the license and registration of a motor vehicle owner or operator who does not have the required minimum levels of motor vehicle insurance at the time of an accident. Under this provision, an owner or operator of a motor vehicle is directly penalized for not having sufficient levels of insurance.

the liability of short-term lessors. . . . The statute reduces responsibility for damages arising from the fault of others but preserves full liability for compensatory damages caused by one's own fault. The statute merely caps the amount of damages for the vicarious liability of the lessor."); *Folmar v. Young*, 591 So. 2d 220 (Fla. 4th DCA 1994) (concluding that § 324.021(9)(b) is an exception to the dangerous instrumentality doctrine and is not a statutory penalty for failing to provide proof of financial responsibility).

The legislative history behind the creation of § 324.021(9)(b)(2) also supports this conclusion.[13] See, e.g., Fla. Staff. An., H.B. 775, May 13, 1999 (noting that one of the purposes of § 324.021(9)(b) is to "encourage personal responsibility by shifting emphasis from compensation based primarily upon loss toward responsibility based upon fault . . . . [T]he new limitations on . . . automobile owner liability both reduce responsibility for damages arising from the fault of others while preserving full liability for compensatory damages caused by one's own fault."); Fla. Staff An., H.B. 775, February 12, 1999 (Section 324.021(9)(b) "limits the vicarious liability of a motor vehicle owner or a rental company that rents or leases motor vehicles. . . . This section limits damages awardable under Florida's common law dangerous instrumentality doctrine, which currently allows a motor vehicle owner to be held liable for injuries caused by the negligence of anyone

---

[13] Again, given the unambiguous language of § 324.021(9)(b)(2), the Court is not required to consider its legislative history. However, a discussion of such extrinsic materials, as well as interpretative caselaw, can be instructive.

entrusted to use the motor vehicle."); Fla. Staff An., H.B. 551, March 17, 2005 ("A company that is a holder of a motor vehicle or equity interest in a motor vehicle title for a rental company may face fewer or less costly lawsuits because of the limits of liability that the holder will qualify for under the terms of the bill."). Thus, it is clear that § 324.021(9)(b) was intended to shift and/or limit financial liability; it does not create insurance requirements or force owners and operators of motor vehicles to maintain a certain level of insurance, and it certainly does not create a private right of action of any kind.

Lastly, Plaintiffs argue that Fla. Stat. § 324.021(9)(b)(2) should not be preempted by the Graves Amendment for public policy reasons. According to the Plaintiffs, "[a]ssigning ultimate financial responsibility to lessors advances the policy goal of preventing the public from bearing responsibility for the costs of motor vehicle accidents."[14] In light of both the Graves Amendment's and § 324.021(9)(b)(2)'s clear and unambiguous language, the Court need not look to public policy concerns to interpret these two statutes; it must be presumed that Congress took such policy concerns into consideration when drafting the Graves Amendment, and that it meant what it said. Moreover, the Graves Amendment does not completely destroy this policy: motor vehicle lessors may still be held directly liable or vicariously liable, and these damages caps will still apply, when the lessors engage in negligence or criminal wrongdoing relating to a motor vehicle accident.

---

[14] Plaintiff's Memorandum in Opposition, p. 8.

All of this analysis drives the conclusion that vicarious liability of motor vehicle lessors under Florida's dangerous instrumentality doctrine is now preempted by federal law. Consequently, Fla. Stat. § 324.021(9)(b)(2) also is preempted. That statute is not a "financial responsibility law," it is merely a damages cap on other causes of action, and cannot survive separate and apart from Florida's dangerous instrumentality doctrine. Accordingly, the Plaintiffs' claims against the Lessor Defendants cannot go forward.

## II. Is the Graves Amendment Constitutional?

Having determined that the Graves Amendment preempts Florida's dangerous instrumentality doctrine as well as Fla. Stat. § 324.021(9)(b)(2), the Court must address the Plaintiffs' second argument - that the Graves Amendment is an unconstitutional exercise of Congress' Commerce Powers under Article I, § 8 of the United States Constitution. The Court finds that it is not.

### A. The Scope of Congress' "Commerce Clause" Powers

Article I, Section 8 of the United States Constitution provides that "[t]he Congress shall have the power to . . . regulate commerce . . . among the several states . . . ." U.S. Const., art. I, § 8, cl. 3. In addition, Article VI of the United States Constitution provides that

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the

> Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const., art. VI, cl. 2. Pursuant to the Supremacy Clause, state law may be preempted in three circumstances: (1) through express statutory language; (2) where federal law has so thoroughly occupied a legislative field as to make a reasonable inference that there is no room for the state to supplement it; and (3) where a state law conflicts with a federal law. *New York State Conference of Blue Cross and Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 654 (1995); *Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Development Comm'n*, 461 U.S. 190, 203-04 (1983); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). This case presents the first circumstance - express statutory language.

As the Plaintiffs acknowledge, Congress' Commerce powers are vast and must be given great deference. The Supreme Court has consistently held that it "must defer to a congressional finding that a regulated activity affects interstate commerce, if there is any rational basis for such a finding." *Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 276 (1981). These powers, however, are not without limits; they must have some nexus to interstate commerce. As the Supreme Court stated in *United States v. Lopez*, 514 U.S. 549 (1995), the scope of Congress' Commerce powers has evolved over time to cover three categories of activity: (1) the channels of interstate commerce; (2)

the instrumentalities of interstate commerce; and (3) intrastate activities that substantially affect interstate commerce. *Lopez*, 514 U.S. at 560. The Lessor Defendants argue that the Graves Amendment falls within each category, while the Plaintiffs contend that it falls within none.

### B. The Channels of Interstate Commerce

This first category of Commerce Clause authority "concerns Congress' power to regulate, for economic or social purposes, the passage of interstate commerce of either people of goods." *United States v. Rybar*, 103 F.3d 273, 288-89 (3d Cir. 1996) (Alito, J., dissenting). The Lessor Defendants argue that Congress appropriately invoked this authority because strict vicarious liability lawsuits against lessors of motor vehicles typically arise following an automobile accident that occurs on roads, streets, intrastate or interstate highways, all of which are channels of commerce. See, e.g. *Pierce County, Washington v. Guillen*, 537 U.S. 129, 147 (2003) (upholding legislation aimed at improving safety in the "channel of commerce," including streets, roads and federal highways); *State of Oklahoma ex rel. Phillips v. Guy F. Atkinson Co.*, 313 U.S. 508 (1941) (recognizing that navigable waters, railroads, and highways are "channels of commerce" which can be regulated under Congress' Commerce powers); *United States v. Ballinger*, 395 F.3d 1218, 1225-26 (11th Cir. 2005) ("channels of commerce are "the interstate transportation routes through which persons and goods move," and include highways, railroads, navigable waters, and airspace) (internal quotations and citations omitted).

The Plaintiffs admit that the Graves Amendment "arguably could fall within" this category of

Commerce Clause powers "if it regulated state tort law as applied to lessors whose leased vehicles passed through interstate commerce."[15] That is exactly what the Graves Amendment does. There can be no dispute that leased vehicles routinely travel between states - in this very case, Gregory Davis was traveling from Florida to Georgia. However, the Plaintiffs contend that the Graves Amendment goes too far - it also regulates the leasing of motor vehicles, and related tort law actions where the vehicles never leave the state - and therefore is outside the scope of Congress' Commerce powers.

This is a distinction without a difference. Whether or not the products – motor vehicles - actually travel out of state, or whether the particular road in question leads out of state is irrelevant. "Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." *Lopez*, 514 U.S. at 558. The fact that an accident which results in potential vicarious liability for lessors occurs on roads that are solely for intrastate travel is of no moment. See *Atkinson*, 313 U.S. at 522-24 (Congress can regulate channels of commerce such as highways and navigable waters, even if portions of those channels are no longer used for interstate commerce); *Overstreet v. North Shore Corp.*, 318 U.S. 125 (1943) (roads that are not themselves interstate highways are still within the purview of Congress' Commerce powers as they may be feeders and extensions within the reach of the main channels of interstate commerce).

---

[15] Plaintiffs' Memorandum, p. 31.

The Court therefore finds that the Graves Amendment is constitutional under the first category of Congress' Commerce Clause powers.[16]

### C. The Instrumentalities of Interstate Commerce

The Court also finds that the Graves Amendment is constitutional under the second category of Congress' Commerce Clause powers because the statute regulates the leasing and operating of motor vehicles which are "the quintessential instrumentalities of modern interstate commerce." *United States v. Bishop*, 66 F.3d 569, 588 (3d Cir. 1995). *See also Ballinger*, 395 F.3d at 1226 ("Instrumentalities of interstate commerce, . . . are the people and things themselves moving in commerce, including automobiles, airplanes, boats, and shipments of goods.").

Congress can regulate such instrumentalities "even though the threat may come only from intrastate activities," *Lopez*, 514 U.S. at 558, and

---

[16] The Plaintiffs' reliance on United States v. Kenney, 91 F.3d 884 (7th Cir. 1996) is not persuasive. In that case, the Seventh Circuit was faced with a federal statute criminalizing the possession and transfer of machine guns. While the court found the statute constitutional under the third Commerce Power category because it substantially affected interstate commerce, it held that analysis under the "channels of commerce" category would be inappropriate because the transfers were not limited solely to those which crossed state lines. 91 F.3d at 889. In this case, however, the channels implicated are roads and highways, which are one of the most traditional "channels of commerce," even when the particular road in question does not directly lead to her state.

this concept completely deflates the Plaintiffs' argument that the Graves Amendment does not appropriately regulate the instrumentalities of interstate commerce because its preemptive effect is not limited solely to instances where the leased vehicle leaves the state. Congress could appropriately recognize that motor vehicles are routinely leased in one state and used for transportation to another, and it would be almost impossible to separate intrastate motor traffic from interstate motor traffic. *See, e.g. Southern R. Co. v. United States*, 222 U.S. 20, 27 (1911) (recognizing that Congress had the power to regulate boxcars that traveled exclusively intrastate because of their inherent mobility and connection to interstate commerce. "[I]t is no objection to such an exertion of [Commerce Clause] power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce.").[17] Indeed, this case itself demonstrates how leased motor vehicles are instrumentalities of interstate commerce. Defendant Davis leased his vehicle from the Lessor Defendants in Florida in order to drive on interstate highways to Georgia, a transaction clearly implicating an instrumentality of interstate commerce. The Court is also aware of instances

---

[17] The Plaintiffs' reliance on dissenting opinions from two other circuit courts is not persuasive, particularly when the precedential effect, if any of these two decisions supports a finding that the Graves Amendment constitutionally regulates the instrumentalities of interstate commerce. See *United States v. McHenry*, 97 F.3d 125 (6th Cir. 1996) (upholding federal carjacking statutes as constitutional exercise of Congress' Commerce Clause powers); *United States v. Bishop*, 66 F.3d 569 (3d Cir. 1995) (same).

where Florida's dangerous instrumentality doctrine has been applied to lessors of motor vehicles in Florida even where the accident occurs in another state that does not impose such strict vicarious liability.[18]

Thus it is clear that by preempting Florida's dangerous instrumentality doctrine, Congress is regulating an instrumentality of commerce.

### D. Intrastate Activities Substantially Affecting Interstate Commerce

Even if the Graves Amendment did not fall within the first two categories of Congress' Commerce Powers, it is constitutional under the third category – regulating intrastate activities that substantially affect interstate commerce. This is the broadest of the three categories: "even if [the] activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce." *Wickard v. Filburn*, 317 U.S. 111, 125 (1942). See also *United States v. Women's Sportswear Mfg. Ass'n*, 336 U.S. 460, 464 (1949) ("If interstate commerce [ultimately] feels the pinch, it

---

[18] See, e.g. Wal-Mart Stores, Inc. v. Budget Rent-A-Car Systems, 567 So.2d 918 (Fla. 1st DCA 1990) (applying Florida's dangerous nstrumentality doctrine to Florida rental car company who rented vehicle to Florida citizen, who was involved in an accident in Georgia, even though Georgia law applied to the underlying negligence claims); Stallworth v. Hospitality Rentals, Inc., 515 So.2d 413 (Fla. 1st DCA 1987) (applying Florida's dangerous instrumentality doctrine to Florida rental car company who rented car in Florida, which was involved in accident in Louisiana).

does not matter how local the operation which applies the squeeze."). In assessing the scope of Congress' authority the Court "need not determine whether [the activities in question], taken in the aggregate, substantially affect interstate commerce in fact, but only whether a "rational basis" exists for so concluding." *Gonzales v. Raich*, 545 U.S. 1, 22 (2005). See also *Lopez*, 514 U.S. at 557; Hodel, 452 U.S. at 276-280. In other words: "Due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds." *Morrison*, 529 U S. at 607.

It is clear to the Court that Congress' attempt to regulate the motor vehicle rental industry by uniformly eliminating the costs of no fault vicarious liability claims, even where such costs relate to solely intrastate travel and accidents, substantially affects interstate commerce. In fact, the car rental industry, together with airlines, railroads, and over the road bus and trucking enterprises, constitute **the** most visible components of modern interstate commerce. Regulating the costs associated with the rental and operation of motor vehicles as "instrumentalities" of interstate commerce, on roads and interstate highways which are "channels" of interstate commerce, must necessarily have an "impact" on interstate commerce.

The Plaintiffs posit numerous other arguments against this conclusion and in support of its contention that the Graves Amendment should be found unconstitutional: (1) that the federal statute does not regulate commerce or any sort of economic enterprise; (2) that the Graves Amendment is not part of a larger federal regulatory scheme, but is only

a small portion of a lengthy appropriations bill which primarily focuses on providing funds for highway and bridge construction and repair; (3) that the statute is a "sharp departure" from a "longstanding pattern of federal regulatory statutes governing safety measures of motor vehicles generally;" (4) that the Graves Amendment fails under the tests and rationale set forth in *Lopez*, 514 U.S. 549, and *United States v. Morrison*, 529 U.S. 598 (2000); (5) that the Graves Amendments' preemption of vicarious liability claims against motor vehicle lessors "represents an incursion into state police powers - the power to define tort law applicable to purely local accidents with no connection to interstate commerce – not sanctioned by the Constitution;" (6) that the statute does not contain any express jurisdictional element such as "affecting interstate commerce" that might limit its reach to a discrete set of circumstances; and (7) that the Graves Amendment is unconstitutional because it does not contain any express congressional findings regarding its effects on interstate commerce. All of these are strained contentions and none are persuasive either individually or taken as a whole.

## CONCLUSION

This is an important case of first impression. No other federal court has analyzed the preemptive scope of the Graves Amendment, and there is a lack of persuasive Florida legal authority addressing the intersection of this Act with Fla. Stat. § 324.021(9)(b)(2).[19] Still, the plain language of the

---

[19] Both sides have presented numerous orders from various trial courts throughout the state of Florida, but these conflicting rulings are neither binding nor

Graves Amendment, coupled with the plain language of Fla. Stat. § 324.021(9)(b)(2) clearly compel the conclusion that the Plaintiffs' claims against the Lessor Defendants are preempted. It is equally clear that the Graves Amendment is a permissible exercise of Congress' Commerce Clause powers.

Because the Court finds that the Graves Amendment preempts all vicarious liability claims against the Lessor Defendants, including those premised on Fla. Stat. § 324.021(9)(b)(2), and that the Graves Amendment is a constitutional exercise of Congress' powers under the Commerce Clause, the Garcia and Ruiz Plaintiffs' claims cannot go forward against any of the Lessor Defendants. Accordingly, upon due consideration, it is hereby ORDERED and ADJUDGED that:

(1) Defendants Vanguard Car Rental USA, Inc.'s, Vanguard Rental (Belgium) Inc.'s, National Rental (US) Inc.'s, Alamo Financing, L.P.'s, and Alamo Rent-A-Car (Canada) Inc.'s Motion for Summary Judgment (Doc. 26) is GRANTED;

(2) Defendants Vanguard Car Rental USA, Inc., Vanguard Rental (Belgium) Inc., National Rental (US) Inc., Alamo Financing, L.P., and Alamo Rent-A-Car (Canada) Inc., are entitled to judgment in their favor as to all claims brought against them by the Garcia Plaintiffs asserted in Case No. 5:06-cv-220-Oc-10GRJ;

---

persuasive to this Court and do not provide any analysis as to how the courts reached their decisions. As such, the Court will not consider any of these unpublished orders. See Progressive Express Ins. Co. v. McGrath Community Chiropractic, 913 So. 2d 1281 (Fla. 2d DCA 2005) (a Florida circuit court order that provides a result without a written opinion cannot act as precedent in future cases).

(3) Defendants Vanguard Car Rental USA, Inc., Vanguard Rental (Belgium) Inc., National Rental (US) Inc., Alamo Financing, L.P., and Alamo Rent-A-Car (Canada) Inc., are entitled to judgment in their favor as to all claims brought against them by the Ruiz Plaintiffs asserted in Case No. 5:06-cv-221-Oc-10GRJ;

(4) The Clerk is directed to withhold the entry of final judgment in the Garcia and Ruiz cases pending resolution of the remaining claims against Defendant Gregory Davis;

(5) With respect to Case No. 5:05-cv-422-Oc-10GRJ, the declaratory judgment action, the Clerk is directed to enter judgment in favor of Petitioners Vanguard Car Rental USA, Inc., National Rental (US), Inc., and Alamo Financing, L.P. and against Respondents the Estate of Jose L. Garcia and the Estate of Nelson Agustin, declaring that the Graves Amendment, 49 U.S.C. § 30106, preempts all state law vicarious liability claims against the Petitioners, including those that may be premised on Fla. Stat. § 324.021(9)(b)(2), as brought by the Respondents with respect to the February 2, 2005 car accident in Marion County, Florida, and therefore the Petitioners are not vicariously liable to the Respondents for any damages resulting from that accident.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 5th day of March, 2007.

## APPENDIX D

## JUDGMENT OF THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA (MARCH 6, 2007)

MARIA D. GARCIA, *et al.*, Plaintiffs,
v.

VANGUARD CAR RENTAL USA, INC., *et al.*,
Defendants.

No. 5:05-cv-00422-WTH-GRJ

Argued January 22, 2007
Decided March 6, 2007

**Declaratory Judgment in a Civil Case**

**Decision by Court.**

This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED**

that pursuant to the Court's Order entered March 5, 2007, judgment is entered in favor of Petitioners Vanguard Car Rental USA, Inc., National Rental (US), Inc., and Alamo Financing, L.P. and against Respondents the Estate of Jose L. Garcia and the Estate of Nelson Agustin, declaring that the Graves Amendment, 49 U.S.C. § 30106, preempts all state law vicarious liability claims against the Petitioners.

including those that may be premised on Fla. Stat. § 324.021(9)(b)(2), as brought by the Respondents with respect to the February 2, 2005 car accident in Marion County, Florida, and therefore the Petitioners are not vicariously liable to the Respondents for any damages resulting from that accident.

## APPENDIX E

## NOTICE OF APPEAL TO THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA OCALA DIVISION (MAY 10, 2007)

MARIA D. GARCIA, as surviving Spouse, as Administrator and Personal Representative of the Estate of Jose Garcia, and on behalf of her Minor Children Gabriela Garcia and Luis Garcia,,

Plaintiffs,

v.

VANGUARD CAR RENTAL USA, INC., a Delaware Corporation; VANGUARD RENTAL (BELGIUM) INC., a Florida Corporation; NATIONAL RENTAL (US), INC., f/k/a NATIONAL CAR RENTAL, a Delaware Corporation; ALAMO FINANCING, LP, a foreign Limited Partnership; ALAMO RENT-A-CAR (CANADA) INC., a Florida Corporation; and GREGORY DAVIS,

Defendants.

No. 5:06-cv-220-OC-10GRJ

### Plaintiff's Notice of Appeal

Notice is hereby given that Plaintiff Maria Garcia, as surviving Spouse, Administrator and Personal Representative of the Estate of Jose L. Garcia, and on behalf of her Minor Children Gabriela Garcia and Luis Garcia, in the above named case hereby appeals to the United States Court of Appeals

for the Eleventh Circuit from an order granting judgment in favor of Defendants and granting Defendants' Motion for Summary Judgment entered on March 5, 2007 (Doc. 41) and from the subsequent denial of Plaintiffs Motion to Alter or Amend Judgment Granting Defendant's Motion for Summary Judgment entered on April 26, 2007 (Doc. 51).[1] The Notice of Appeal docketing fee has been mailed via Federal Express to the Clerk of the U.S. District Court for the Middle District of Florida.

Respectfully submitted this 10th day of May, 2007.

By: /s/ Andre Mura
ANDRE MURA, ESQ.
*Pro Hac Vice*
D.C. Bar No. 492837
andre.mura@cclfirm.com
JOHN VAIL, ESQ.
*Pro Hac Vice*
D.C. Bar No. 461512
john.vail@cclfirm.com
Center for Constitutional Litigation, P.C.
1050 31st Street, N.W.
Washington, DC 20007
(202) 944-2803 (telephone)
(202) 965-0920 (fax)
*Attorneys for Plaintiffs*

---

[1] This Court's order consolidating three related cases (Case Nos. 5:06-cv-220-OC-10GRJ, 5:06-cv-221-OC-10GRJ, and 5:05-cv-422-OC-10GRJ), provides that all filings be made in the *Garcia* case (No. 5:06-cv-220-OC-10GRJ) "until further order from the Court." (*Garcia* Case, Doc. 22). Accordingly, this Notice of Appeal serves to Notice Appeals in all three consolidated cases.

# APPENDIX F

## U.S. CONST. ART. I § 8

Constitution of the United States

Article I. The Congress

**Section 8.**

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of

training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;— And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

# APPENDIX G

## 49 U.S.C. § 30106 (2006)

United States Code Annotated

**Title 49. Transportation**

**GRAVES AMENDMENT**

### § 30106. Rented or leased motor vehicle safety and responsibility

**(a) In general.**—An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—

(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

**(b) Financial responsibility laws.**—Nothing in this section supersedes the law of any State or political subdivision thereof—

(1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or

(2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.

**(c) Applicability and effective date.**—Notwithstanding any other provision of law, this section shall apply with respect to any action commenced on or after the date of enactment of this section without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment.

**(d) Definitions.**—In this section, the following definitions apply:

(1) **Affiliate.**—The term "affiliate" means a person other than the owner that directly or indirectly controls, is controlled by, or is under common control with the owner. In the preceding sentence, the term "control" means the power to direct the management and policies of a person whether through ownership of voting securities or otherwise.

(2) **Owner.**—The term "owner" means a person who is—

(A) a record or beneficial owner, holder of title, lessor, or lessee of a motor vehicle;

(B) entitled to the use and possession of a motor vehicle subject to a security interest in another person; or

(C) a lessor, lessee, or a bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles, having the use or possession thereof, under a lease, bailment, or otherwise.

**(3) Person.**—The term "person" means any individual, corporation, company, limited liability company, trust, association, firm, partnership, society, joint stock company, or any other entity.

# APPENDIX H

## Fla. Stat. § 324.021 (2007)

Florida Statute Annotated

## Title XXIII. Motor Vehicles
## Chapter 324. Financial Responsibility

## FINANCIAL RESPONSIBILITY ACT

### § 324.021. Definitions; minimum insurance required

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

**(1) Motor vehicle.**—Every self-propelled vehicle which is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any bicycle or moped. However, the term "motor vehicle" shall not include any motor vehicle as defined in § 627.732(3) when the owner of such vehicle has complied with the requirements of §§ 627.730-627.7405, inclusive, unless the provisions of § 324.051 apply; and, in such case, the applicable proof of insurance provisions of § 320.02 apply.

**(2) Department.**—The Department of Highway Safety and Motor Vehicles.

**(3) Operator.**—Every person who is in actual physical control of a motor vehicle.

**(4) Person.**—Every natural person, firm, copartnership, association, or corporation.

**(5) Nonresident.**—Every person who is not a resident of this state.

**(6) License.**—Any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

**(7) Proof of financial responsibility.**—That proof of ability to respond in damages for liability on account of crashes arising out of the use of a motor vehicle:

**(a)** In the amount of $10,000 because of bodily injury to, or death of, one person in any one crash;

**(b)** Subject to such limits for one person, in the amount of $20,000 because of bodily injury to, or death of, two or more persons in any one crash;

**(c)** In the amount of $10,000 because of injury to, or destruction of, property of others in any one crash; and

**(d)** With respect to commercial motor vehicles and nonpublic sector buses, in the amounts specified in §§ 627.7415 and 627.742, respectively.

**(8) Motor vehicle liability policy.** —Any owner's or operator's policy of liability insurance furnished as proof of financial responsibility pursuant to § 324.031, insuring such owner or operator against loss from liability for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of a motor vehicle in not less than the limits described in subsection (7) and conforming to the requirements of § 324.151, issued by any insurance company authorized to do business in this state.

**(9) Owner; owner/lessor.—**

**(a) Owner.**—A person who holds the legal title of a motor vehicle; or, in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(b) **Owner/lessor.**—Notwithstanding any other provision of the Florida Statutes or existing case law:

1. The lessor, under an agreement to lease a motor vehicle for 1 year or longer which requires the lessee to obtain insurance acceptable to the lessor which contains limits not less than $100,000/$300,000 bodily injury liability and $50,000 property damage liability or not less than $500,000 combined property damage liability and bodily injury liability, shall not be deemed the owner of said motor

vehicle for the purpose of determining financial responsibility for the operation of said motor vehicle or for the acts of the operator in connection therewith; further, this subparagraph shall be applicable so long as the insurance meeting these requirements is in effect. The insurance meeting such requirements may be obtained by the lessor or lessee, provided, if such insurance is obtained by the lessor, the combined coverage for bodily injury liability and property damage liability shall contain limits of not less than $1 million and may be provided by a lessor's blanket policy.

2. The lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, shall be deemed the owner of the motor vehicle for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith only up to $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than $500,000 combined property damage and bodily injury liability, the lessor shall be liable for up to an additional $500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages shall be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator. Nothing in this subparagraph shall be

construed to affect the liability of the lessor for its own negligence.

3. The owner who is a natural person and loans a motor vehicle to any permissive user shall be liable for the operation of the vehicle or the acts of the operator in connection therewith only up to $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage. If the permissive user of the motor vehicle is uninsured or has any insurance with limits less than $500,000 combined property damage and bodily injury liability, the owner shall be liable for up to an additional $500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the owner for economic damages shall be reduced by amounts actually recovered from the permissive user and from any insurance or self-insurance covering the permissive user. Nothing in this subparagraph shall be construed to affect the liability of the owner for his or her own negligence.

(c) ***Application.***—

1. The limits on liability in subparagraphs (b)2. and 3. do not apply to an owner of motor vehicles that are used for commercial activity in the owner's ordinary course of business, other than a rental company that rents or leases motor vehicles. For purposes of this paragraph, the term "rental company" includes only an entity that is engaged in the business of renting or leasing motor vehicles to the general public and that rents or leases a

majority of its motor vehicles to persons with no direct or indirect affiliation with the rental company. The term also includes a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days. The term "rental company" also includes:

a. A related rental or leasing company that is a subsidiary of the same parent company as that of the renting or leasing company that rented or leased the vehicle.

b. The holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to or to facilitate an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company, as described in this subparagraph, in the operation of such rental company's business.

2. Furthermore, with respect to commercial motor vehicles as defined in § 627.732, the limits on liability in subparagraphs (b)2. and 3. do not apply if, at the time of the incident, the commercial motor vehicle is being used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. §§ 5101 et seq., and that is required pursuant to such act to carry placards warning others of the

hazardous cargo, unless at the time of lease or rental either:

**a.** The lessee indicates in writing that the vehicle will not be used to transport materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. §§ 5101 et seq.; or

**b.** The lessee or other operator of the commercial motor vehicle has in effect insurance with limits of at least $5,000,000 combined property damage and bodily injury liability.

**(10) Judgment.**—Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle for damages, including damages for care and loss of services because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damage.

**(11) Registration.**—Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.